

Page 2

APPEARANCES:

Representing the Plaintiffs:

BAACH ROBINSON & LEWIS PLLC

1201 F Street, NW

Suite 500

Washington, D.C. 20004

BY: JONATHAN D. FINE, ESQUIRE

Representing the Defendant:

EDWARDS ANGELL PALMER & DODGE LLP

111 Huntington Avenue

Boston, Massachusetts 02199

BY: VERONICA C. ABREU, ESQUIRE

Page 4

EXHIBITS, Continued

NO.	DESCRIPTION	PAGE NO.
7	Copy of E-mail to Mr. Murphy, et al. by Mr. Fitzgibbons, dated 2-28-02, and Bentley Pharmaceuticals Project Status Report - January 29, 2002	79
8	Copy of E-mail to Mr. Bolling, et al. by Mr. Fitzgibbons, dated 11-17-00	95
9	Copy of E-mail to Mr. Bolling, et al. by Mr. Fitzgibbons, dated 12-27-00	100
10	Copy of E-mail to Mr. Murphy by Mr. Fitzgibbons, dated 2-28-01, and Attachment	105
11	Copy of E-mail to Mr. Murphy, et al. by Mr. Fitzgibbons, dated 3-1-01	110
12	Copy of E-mail to Mr. Murphy by Mr. Fitzgibbons, dated 3-9-01	116
13	Copy of E-mail to Mr. Bolling, et al. by Mr. Fitzgibbons, dated 1-22-02, and attached Bentley Pharmaceuticals Operations Update - 22-January 2002	120
14	Copy of E-mail to Mr. Murphy by Mr. Fitzgibbons, dated 1-7-03	133
15	Presentation to Bentley Pharmaceuticals, Inc.	146

Page 3

INDEX

WITNESS:	PAGE NO.
PAUL FITZGIBBONS	
BY MR. FINE	5
BY MS. ABREU	149

EXHIBITS

NO.	DESCRIPTION	PAGE NO.
1	Copy of E-mail to Mr. Murphy by Mr. Fitzgibbons, dated 11-8-00, and Attached Project Status Report 24 October	55
2	Bentley Pharmaceuticals Project Status Report - October 18, 2001	60
3	Copy of E-mail to Mr. Price, et al. by Mr. Fitzgibbons, dated 12-15-00, and Bentley Pharmaceuticals Project Status Report - 11 December	64
4	Copy of E-mail to Mr. Murphy by Mr. Fitzgibbons, dated 11-15-01, and Bentley Pharmaceuticals Project Status Report - November 6, 2001	67
5	Copy of E-mail to Mr. Murphy, et al. by Mr. Fitzgibbons, dated 11-30-01, and Bentley Pharmaceuticals Project Status Report - November 20, 2001	72
6	Copy of E-mail to Mr. Murphy, et al. by Mr. Fitzgibbons, dated 1-17-02, and Bentley Pharmaceuticals Project Status Report - January 11, 2002	77

Page 5

PROCEEDINGS

(The New Hampshire driver's license number as identification of the deponent was noted for the record.)

PAUL FITZGIBBONS, having duly sworn or affirmed that his testimony would be the truth, the whole truth, and nothing but the truth, testified as follows:

\* \* \*

EXAMINATION BY MR. FINE:

Q. Thank you for coming here this morning, Mr. Fitzgibbons. As you may know, I represent the Plaintiffs in this matter, Ethypharm France and Ethypharm Spain. My name is Jonathan Fine. And Ethypharm France and Ethypharm Spain have brought a lawsuit against Bentley Pharmaceuticals, Incorporated. You understand that?

A. Yes.

Q. I believe Ms. Abreu is here representing Bentley Pharmaceuticals, Incorporated.

MS. ABREU: I am.

Q. The court reporter -- have you been deposed in a lawsuit before?

2 (Pages 2, to 5)

<p style="text-align: right;">Page 6</p> <p>1 A. No, first time.</p> <p>2 Q. Well, the way that this works is I ask you</p> <p>3 questions and you have to answer truthfully. Do</p> <p>4 you understand that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Okay. If you don't understand a question,</p> <p>7 please let me know and we'll see if we can clear</p> <p>8 it up or I can ask it in a way that helps you</p> <p>9 understand it. You have to answer verbally, not</p> <p>10 with a gesture or a nod of the head because the</p> <p>11 court reporter can't take down those things.</p> <p>12 And do you know of any reason you</p> <p>13 might not be able to understand my questions</p> <p>14 easily or answer fully today?</p> <p>15 A. No.</p> <p>16 Q. Is there any medical condition that might</p> <p>17 interfere with your understanding my questions</p> <p>18 or giving complete answers?</p> <p>19 A. Yes. My hearing in my left ear is impaired</p> <p>20 right now, so I might have to ask you to repeat</p> <p>21 if I don't hear properly.</p> <p>22 Q. Okay. I understand. And if you don't hear a</p> <p>23 question completely or your hearing gives you</p> <p>24 trouble, please do immediately ask me to</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. How long have you been employed at Bentley</p> <p>2 Pharmaceuticals?</p> <p>3 A. Close to six years. It'll be six years in</p> <p>4 October.</p> <p>5 Q. When were you hired?</p> <p>6 A. October 2nd, 2000.</p> <p>7 Q. And how did you come to be hired at Bentley</p> <p>8 Pharmaceuticals?</p> <p>9 A. I was approached by the president, CEO of the</p> <p>10 company at that time, and he needed assistance</p> <p>11 in business, project management.</p> <p>12 Q. And who was the president and CEO at that time?</p> <p>13 A. Jim Murphy.</p> <p>14 Q. And how did Mr. Murphy approach you?</p> <p>15 A. Primarily by phone call.</p> <p>16 Q. Did you know Mr. Murphy previously?</p> <p>17 A. Yes, I did.</p> <p>18 Q. How did you know Mr. Murphy previously?</p> <p>19 A. He's my brother-in-law.</p> <p>20 Q. So are you married to his sister or is he</p> <p>21 married to your sister?</p> <p>22 A. I am married to his sister.</p> <p>23 Q. And how long have you been married to</p> <p>24 Mr. Murphy's sister?</p>
<p style="text-align: right;">Page 7</p> <p>1 clarify.</p> <p>2 A. Yes.</p> <p>3 Q. If you don't, I'll assume you have heard the</p> <p>4 question. Is that all right?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Let me know also if you need to take a break at</p> <p>7 any time during the day. I expect to be taking</p> <p>8 some breaks, and this is not a marathon session</p> <p>9 that's meant to keep us here and uncomfortable.</p> <p>10 Do you understand?</p> <p>11 A. Yes.</p> <p>12 Q. The only condition on that is that we will not</p> <p>13 take a break while a question is pending, that</p> <p>14 is, while I've asked a question but before</p> <p>15 you've given an answer. Do you understand?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And by agreement of the lawyers today, we've</p> <p>18 agreed that you will not discuss the substance</p> <p>19 of your testimony with your lawyer during any of</p> <p>20 the breaks. Is that understood?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Very good. Are you presently employed at</p> <p>23 Bentley Pharmaceuticals, Incorporated?</p> <p>24 A. Yes, I am.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Thirty-one years.</p> <p>2 Q. And were you interviewed for your position at</p> <p>3 Bentley Pharmaceuticals?</p> <p>4 A. Yes.</p> <p>5 Q. And who interviewed you?</p> <p>6 A. Mike Price and Mike McGovern and Robert Gyurik.</p> <p>7 Q. Did you meet with anyone else during your</p> <p>8 interview process?</p> <p>9 A. Not that I recall.</p> <p>10 Q. What did you understand your position at Bentley</p> <p>11 Pharmaceuticals would be?</p> <p>12 A. Well, I was being hired under the title of</p> <p>13 director of special projects, which primarily</p> <p>14 the focus was to be on outside contracts with</p> <p>15 educational universities and so forth,</p> <p>16 University of New Hampshire in Dartmouth,</p> <p>17 University of Alabama at Birmingham, and duties</p> <p>18 were to be added to the job as we got acclimated</p> <p>19 to the company here. I did not have a</p> <p>20 background in pharmaceuticals, so that was -- it</p> <p>21 was a little bit of an initial learning curve.</p> <p>22 Q. And specifically with regard to outside</p> <p>23 educational institutions, what were your</p> <p>24 responsibilities to be?</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 A. To engage the universities and state agencies in 2 working up cooperative agreements between the 3 company, the state, and the university. 4 Q. Okay. And a few moments ago, you mentioned that 5 you did not have the background in the 6 pharmaceutical industry; is that correct? 7 A. I did. 8 Q. What do you consider your background to be? 9 A. Rather a generalist. 10 Q. What kind of generalist? 11 A. In business, project management, and program 12 management, and financial matters. 13 Q. Had you been employed anywhere before Bentley 14 Pharmaceuticals? 15 A. Yes. 16 Q. Okay. Where were you employed before Bentley 17 Pharmaceuticals? 18 A. I was employed at SAIC, which is short for 19 Science Applications International Corporation. 20 Q. And for how long were you employed at SAIC? 21 A. Approximately three years. 22 Q. And what was your position at SAIC? 23 A. I was an information technology manager. 24 Q. And what were your responsibilities as</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And what were your responsibilities as a program 2 manager? 3 A. To manage a group of -- varied anywhere from ten 4 to eighteen people in support of a government 5 project for what we called EDMICS, which was the 6 Engineering Data Management Information Control 7 System. It was an engineering and high-tech 8 system for automating engineering drawings 9 throughout all components of the services. 10 Q. And what were the main clients that you had at 11 General Scientific Corporation? 12 A. The main client was the -- it was through the 13 Naval Air Systems Command initially, which spun 14 off into a joint program. So it was a 15 multiservice agency referred to as JEDMICS, 16 Joint Engineering Data Management Information 17 Control System. 18 Q. And before you were at General -- or how long 19 were you at General Scientific Corporation? 20 A. About five -- a little over five years. 21 Q. And before you were at General Scientific 22 Corporation, were you employed? 23 A. I was in the U.S. Navy. There was one more 24 short period of employment prior to that for a</p>
<p style="text-align: right;">Page 11</p> <p>1 information technology manager at SAIC? 2 A. My responsibilities were to support the 3 information technology director for the 4 Government at Fort Belvoir, Virginia. 5 Q. And what support did that consist of as 6 information technology director? 7 A. It consisted of a multitude of enterprise-type 8 support functions for the agency, which was the 9 Defense Logistics Agency. Brought them through 10 the Y2K debacle. The nature of the job changed 11 with time, but I was an on-site support 12 representative working with a defense 13 contractor, but on site with the Government. 14 Q. And that was with the Department of Defense? 15 A. Yes. 16 Q. And before you were employed as an information 17 technology manager at SAIC, were you employed? 18 A. At General Scientific Corporation. 19 Q. And what did -- I'm sorry. I didn't mean to cut 20 you off. 21 A. No. Go ahead. 22 Q. What was your position at General Scientific 23 Corporation? 24 A. I was a program manager.</p>	<p style="text-align: right;">Page 13</p> <p>1 six-month employment with a -- if I can remember 2 the name of the company. It was just a short 3 stint. Another defense contractor in the 4 Washington, D.C. area. 5 Q. Do you recall the name of that contractor? 6 A. It'll come to me in a minute. 7 Q. Okay. In the Navy, did you hold a position or a 8 rank? 9 A. Yes. 10 Q. What was your rank? 11 A. I was a commander, which is an O-5 is the rank. 12 Q. And what year did you leave the Navy? 13 A. February 1st, 2000 -- not 2000. I should know 14 this. I think it was '98. No, it couldn't have 15 been '98. I was employed with them -- 16 Q. So far you've said -- 17 A. '91. I'm sorry. '91. There we go. February 18 1st, 1991. 19 Q. So you left the Navy February 1st, 1991; is that 20 correct? 21 A. Yes. 22 Q. And what were your duties as a commander in the 23 U.S. Navy? 24 A. Varied over time. The last position was working</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 for the director of Naval Reserve at the</p> <p>2 Pentagon. I was a director of all the surface</p> <p>3 programs for the Naval Reserve.</p> <p>4 Q. And do you have any particular expertise in</p> <p>5 technology or information technology?</p> <p>6 A. I would say yes.</p> <p>7 Q. What is your expertise in information</p> <p>8 technology?</p> <p>9 A. Well, having worked with it in all -- well, the</p> <p>10 two last defense-contractor-type positions, one</p> <p>11 for General Scientific Corporation and one for</p> <p>12 SAIC, both of those projects that I was involved</p> <p>13 with would be classified as an IT project.</p> <p>14 Q. Okay. And when did you join the Navy?</p> <p>15 A. When did I join the Navy? Wow. November 10th,</p> <p>16 1964. Marine Corps birthday.</p> <p>17 Q. And how did you come to join the Navy?</p> <p>18 A. I enlisted.</p> <p>19 Q. Where were you living at that time?</p> <p>20 A. Lynn, Massachusetts.</p> <p>21 Q. And had you finished high school at that point?</p> <p>22 A. Yes.</p> <p>23 Q. When did you finish high school?</p> <p>24 A. 1964.</p>	<p style="text-align: right;">Page 16</p> <p>1 reserve readiness command at the Great Lakes</p> <p>2 Training Center in Illinois. I ran another</p> <p>3 larger reserve center in Pittsburgh,</p> <p>4 Pennsylvania, and I became the director of</p> <p>5 surface programs for the Naval Reserve at the</p> <p>6 Pentagon. I missed one initial assignment prior</p> <p>7 to the Chicopee one, and that was as a navigator</p> <p>8 and operations officer onboard ship in Rota,</p> <p>9 Spain.</p> <p>10 Q. What ship was that?</p> <p>11 A. It was the U.S.S. SIMON LAKE ship.</p> <p>12 Q. What class ship was that?</p> <p>13 A. It was a submarine tender.</p> <p>14 Q. Do you sail?</p> <p>15 A. Not lately, but I have.</p> <p>16 Q. It's fun. I enjoy it.</p> <p>17 A. Boating.</p> <p>18 Q. Do you have a boat now?</p> <p>19 A. Yes.</p> <p>20 Q. What kind of boat do you have?</p> <p>21 A. It's a 21-foot Sea Ray, open bow. Kind of a</p> <p>22 lake boat.</p> <p>23 Q. What attracted you to Bentley Pharmaceuticals?</p> <p>24 A. A switch, a change in career, a challenge. I</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Where were you stationed while you were in the</p> <p>2 Navy, if you could start in 1964?</p> <p>3 A. Initially, recruit training, which was in</p> <p>4 Illinois. Followed by that -- you want every</p> <p>5 tour of duty?</p> <p>6 Q. The big ones, the ones that stand out.</p> <p>7 A. Well, as an enlisted person, following recruit</p> <p>8 training, I was sent to what they call the Naval</p> <p>9 Academy preparatory school for a year, whereupon</p> <p>10 I was accepted to the Naval Academy after that.</p> <p>11 I did four years at the Naval Academy.</p> <p>12 Q. In Annapolis?</p> <p>13 A. In Annapolis. Graduated in 1970. Embarked on a</p> <p>14 career. Initial assignments were onboard ship,</p> <p>15 varying positions, for about five years.</p> <p>16 Following that, I got involved with the Naval</p> <p>17 Reserve program, and I had several assignments</p> <p>18 of increasing importance with the Naval Reserve</p> <p>19 until I retired in 1991.</p> <p>20 Q. And during the time that you were with the Naval</p> <p>21 Reserve, where were you stationed?</p> <p>22 A. I was stationed -- ran the reserve center at</p> <p>23 Chicopee, Massachusetts, which is north of</p> <p>24 Springfield. I was a training director at their</p>	<p style="text-align: right;">Page 17</p> <p>1 was kind of getting wary (sic) of the type of</p> <p>2 work that I was doing, wanted to essentially see</p> <p>3 a change.</p> <p>4 Q. How so wary?</p> <p>5 A. Excuse me?</p> <p>6 Q. How so wary?</p> <p>7 A. Just the defense contractor work was getting a</p> <p>8 little boring for me. I was probably within one</p> <p>9 to two years facing another change to another</p> <p>10 defense contractor, which I would not have had</p> <p>11 any problem doing that, but -- and I also wanted</p> <p>12 to get out of the Washington, D.C. area, which</p> <p>13 is where I was located. So the idea of coming</p> <p>14 to New Hampshire with a change of employment was</p> <p>15 attractive to me.</p> <p>16 Q. Okay. Did anyone at Bentley give you a formal</p> <p>17 description of your responsibilities as director</p> <p>18 of special projects?</p> <p>19 A. Yes.</p> <p>20 Q. And who did that?</p> <p>21 A. It was provided in my offer of employment by</p> <p>22 Mike Price.</p> <p>23 Q. And was your offer of employment a written</p> <p>24 document?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. And was your offer of employment signed by Mike</p> <p>3 Price?</p> <p>4 A. Yes.</p> <p>5 Q. And did you understand your offer of employment</p> <p>6 to be an employment contract?</p> <p>7 A. No, it was not a contract.</p> <p>8 Q. What were the terms of your offer of employment?</p> <p>9 A. I was hired as an employee at will, and the</p> <p>10 terms were a salary, some initial options, and</p> <p>11 the standard benefit components that were</p> <p>12 authorized at that time, always subject to</p> <p>13 change. There was no length of employment</p> <p>14 specified.</p> <p>15 Q. You testified a few moments ago that that</p> <p>16 document also provided a description of your</p> <p>17 responsibilities. Do you recall that</p> <p>18 description?</p> <p>19 A. Portions of it. It was more a bulletized list</p> <p>20 of responsibilities.</p> <p>21 Q. And what responsibilities do you recall?</p> <p>22 A. The ones I mentioned prior regarding engagement</p> <p>23 of universities and state agencies for</p> <p>24 monitoring of contracts, for setting up</p>	<p style="text-align: right;">Page 20</p> <p>1 A. It's a project management software.</p> <p>2 Q. And had you had experience with Microsoft</p> <p>3 Project before?</p> <p>4 A. Yes.</p> <p>5 Q. Where had you had that experience?</p> <p>6 A. At my prior jobs, more than one.</p> <p>7 Q. And so I'm sure I understand, Microsoft Project</p> <p>8 is project management software that indicates</p> <p>9 how -- what stage of a project something is in</p> <p>10 or --</p> <p>11 A. It lays out a time line. It lays out PERT</p> <p>12 charts. It lays out resources, just to complete</p> <p>13 project management control of a project.</p> <p>14 Q. And did you ever use Project -- Microsoft</p> <p>15 Project while you were at Bentley between the</p> <p>16 years 2000 and 2003?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall the year in which you began using</p> <p>19 Microsoft project?</p> <p>20 A. 2000 -- it was either 2000 or 2001. Early 2000s</p> <p>21 time frames.</p> <p>22 Q. Did you propose using Microsoft Project?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Had the company -- and by the company, I mean</p>
<p style="text-align: right;">Page 19</p> <p>1 tracking, monitoring projects for the company,</p> <p>2 eventually to get involved with various filings</p> <p>3 of drug applications in the U.S. Those are the</p> <p>4 ones that come to mind.</p> <p>5 Q. Do you recall any others?</p> <p>6 A. Not right now.</p> <p>7 Q. A moment ago, you testified that one of the</p> <p>8 responsibilities you recall was setting up</p> <p>9 tracking monitoring projects. What do you mean</p> <p>10 by that?</p> <p>11 A. Just getting our arms around all of the very</p> <p>12 projects that the company was engaged in at the</p> <p>13 time and trying to prioritize them, work them</p> <p>14 into management meetings to properly discuss</p> <p>15 them, potentially set up project management</p> <p>16 tracking of each one or at least the major</p> <p>17 projects through project management software,</p> <p>18 that type of thing, which involved also the</p> <p>19 recordation of action items and tracking of</p> <p>20 those and monitoring of their completion or</p> <p>21 noncompletion.</p> <p>22 Q. Did you use any project management software?</p> <p>23 A. Primarily Microsoft Project.</p> <p>24 Q. What is Microsoft Project?</p>	<p style="text-align: right;">Page 21</p> <p>1 Bentley Pharmaceuticals, Incorporated -- had any</p> <p>2 experience with Microsoft Project before you</p> <p>3 proposed it?</p> <p>4 A. No, no other person there at the time had any</p> <p>5 sufficient experience with it other than myself.</p> <p>6 Q. Did you use any other tools to track projects at</p> <p>7 Bentley Pharmaceuticals between the years 2000</p> <p>8 and 2003?</p> <p>9 MS. ABREU: Objection, vague.</p> <p>10 A. Yes.</p> <p>11 Q. What other tools did you use?</p> <p>12 A. Primarily tabular listings.</p> <p>13 Q. Did you use -- what do you mean -- strike that.</p> <p>14 What do you mean by a tabular listing?</p> <p>15 A. A tabular listing of projects mostly generated</p> <p>16 as after-action-type reports from monthly</p> <p>17 management meetings that were conducted at the</p> <p>18 company.</p> <p>19 Q. And what form did those tabular listings of</p> <p>20 projects take?</p> <p>21 A. Could you clarify?</p> <p>22 Q. Sure.</p> <p>23 A. What do you mean by form?</p> <p>24 Q. Were they charts? Were they Word documents?</p>

6 (Pages 18 to 21)



<p style="text-align: right;">Page 22</p> <p>1 Were they in notebooks?</p> <p>2 A. Primarily in Word tables.</p> <p>3 Q. And by Word, you mean Microsoft Word?</p> <p>4 A. Yes.</p> <p>5 Q. And who had access to your Microsoft project</p> <p>6 files at Bentley Pharmaceuticals, Incorporated?</p> <p>7 A. Can you clarify what you mean by access?</p> <p>8 Q. Were those program files that you kept on your</p> <p>9 work computer?</p> <p>10 A. Yes, they were.</p> <p>11 Q. Were they kept on a shared server?</p> <p>12 A. Yes, they were.</p> <p>13 Q. Did you e-mail those projects to anyone else?</p> <p>14 A. Yes, I did.</p> <p>15 Q. To whom did you e-mail them?</p> <p>16 A. Members of the management team.</p> <p>17 Q. And who is a member or -- who was a member of</p> <p>18 the management team between 2000 and 2003?</p> <p>19 A. The CEO and president at that time, Jim Murphy;</p> <p>20 Michael Price, our CFO; Robert Gyurik, our head</p> <p>21 of pharmaceutical development; Dr. Bob Stote,</p> <p>22 who is the head of our clinical development, and</p> <p>23 Dr. James Hand, who is the head of our business</p> <p>24 development, and Jordan Horvath, who was our</p>	<p style="text-align: right;">Page 24</p> <p>1 an on-site regulatory person. We had a contract</p> <p>2 regulatory person, so I assisted her. I was</p> <p>3 involved with developing -- in addition to</p> <p>4 the -- this was right from the very beginning.</p> <p>5 I may have said this before. The setup,</p> <p>6 scheduling, monitoring, format, facilitating of</p> <p>7 our management meetings, which took place mostly</p> <p>8 on a monthly basis from 2000 until the present.</p> <p>9 I also was tasked to draft and put</p> <p>10 together an operations summary to the board of</p> <p>11 directors on a recurring basis. The schedule</p> <p>12 wasn't set. It was quarterly at the most</p> <p>13 frequent, but in actuality, probably</p> <p>14 semi-annual.</p> <p>15 In 2004, I had a complete change of</p> <p>16 responsibilities. By the way, there was a job</p> <p>17 title change in that period. About two years</p> <p>18 after I was at the company, my job title changed</p> <p>19 from director of special projects to director of</p> <p>20 programs and project management. It was purely</p> <p>21 a title change to more accurately reflect what I</p> <p>22 was doing.</p> <p>23 Then, in 2004, I was asked to take</p> <p>24 over human resources, management of all of our</p>
<p style="text-align: right;">Page 23</p> <p>1 in-house counsel, our general counsel.</p> <p>2 MR. FINE: Could the reporter please</p> <p>3 read back that last answer?</p> <p>4 (Reporter read back the last answer.)</p> <p>5 Q. Have any additional responsibilities been added</p> <p>6 to your job responsibilities since the year</p> <p>7 2000?</p> <p>8 A. Yes.</p> <p>9 Q. What responsibilities are those?</p> <p>10 A. Could I clarify that? Ask you a question? Are</p> <p>11 you referring all the way up to the present or</p> <p>12 up to what time?</p> <p>13 Q. Yes, to the present.</p> <p>14 A. There have been numerous changes in my</p> <p>15 responsibilities over the time that I've been at</p> <p>16 the company. In addition to the ones I</p> <p>17 mentioned prior, I began support for Dr. Bob</p> <p>18 Stote in clinical matters, assisting him with</p> <p>19 the tracking -- the setup, the tracking, and the</p> <p>20 reports for clinical trials; assisting him for</p> <p>21 presentation work that he would take to</p> <p>22 appropriate conferences to promote our projects.</p> <p>23 I was involved with some initial regulatory --</p> <p>24 setup of regulatory files since we didn't have</p>	<p style="text-align: right;">Page 25</p> <p>1 facilities and grounds, management of all the</p> <p>2 information technology, yet to retain some of</p> <p>3 the responsibilities that I still had in the</p> <p>4 former position.</p> <p>5 Q. That's quite a big portfolio. Do you recall</p> <p>6 what year you began assisting with presentations</p> <p>7 at conferences?</p> <p>8 A. The best I can recall is 2003.</p> <p>9 Q. And the year that you began assisting with</p> <p>10 regulatory matters?</p> <p>11 A. I would say 2002.</p> <p>12 Q. And the year that you began drafting operational</p> <p>13 summaries for the board of directors?</p> <p>14 A. I don't recall the exact time I started that.</p> <p>15 So I would be speculating as to -- I'd have to</p> <p>16 refer back to when the first report was done,</p> <p>17 and that would tell me when it was.</p> <p>18 Q. And in 2004, along with your complete change of</p> <p>19 responsibilities, you testified that you took</p> <p>20 over human resources and management of Bentley's</p> <p>21 facilities and grounds; is that right?</p> <p>22 A. That's true.</p> <p>23 Q. All right. Which facilities and grounds does</p> <p>24 that encompass?</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 A. It's at Two Holland Way in Exeter, New 2 Hampshire. We had in 2003 -- in February 2003, 3 we purchased the former headquarters of Tyco and 4 took over the building. So shortly thereafter, 5 in August of 200- -- it was a year later and 6 four months. In August of 2004, I took over the 7 function and the position. 8 Q. Any other facilities? 9 A. No, that's it. 10 Q. Any facilities outside the United States? 11 A. No. 12 Q. And IT facilities, are those housed in Bentley's 13 facilities in Exeter, New Hampshire? 14 A. Yes, they are. 15 Q. And where were they housed before 2004? 16 A. We contracted out for assistance, IT support. 17 Q. And with whom did Bentley Pharmaceuticals 18 contract out IT support? 19 A. It was with somewhat of a freelance IT 20 specialist, running his own consulting company. 21 Q. And what was the IT specialist's name? 22 A. Lance Aughey. 23 Q. And does Bentley Pharmaceuticals have any 24 relationship with Lance Aughey at the present</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. What were those needs? 2 A. He needed help in managing the multiple projects 3 that they were involved in. 4 Q. So when you accepted employment at Bentley 5 Pharmaceuticals, did you report directly to 6 Mr. Murphy? 7 A. No, never. 8 Q. To whom did you report at Bentley 9 Pharmaceuticals? 10 A. I reported to Robert Gyurik. 11 Q. And did anyone report to you at Bentley 12 Pharmaceuticals? 13 A. No, not at that time. 14 Q. And do you understand why you were to report to 15 Mr. Gyurik? 16 A. Because that was the most appropriate place for 17 me to report to for the type of work that they 18 needed to be completed. 19 Q. And did Mr. Gyurik provide Mr. Murphy with 20 assistance in managing the projects that Bentley 21 Pharmaceuticals had? 22 MS. ABREU: Objection, time frame. 23 Q. At the time you were hired. 24 A. Could you repeat that?</p>
<p style="text-align: right;">Page 27</p> <p>1 time? 2 A. Yes, we do. 3 Q. What is that relationship? 4 A. He's my IT manager. He reports to me. 5 Q. So would it be fair to say that Mr. Aughey was 6 brought in-house? 7 A. Yes, it would be fair to say that. 8 Q. And when was Mr. Aughey brought in-house? 9 A. January 1st of 2003 -- that's not correct. It 10 would have had to be 2004. 11 Q. And at the start of your deposition, you 12 testified that Mr. Murphy had called you about 13 coming to work at Bentley Pharmaceuticals -- 14 A. Yes. 15 Q. -- is that correct? What did Mr. Murphy explain 16 to you on that phone call? 17 A. I can't recall everything that was said in the 18 phone call, but the general nature of the phone 19 call was to feel me out for my interest in 20 possibly coming to work for Bentley and 21 relocating to New Hampshire. 22 Q. Did Mr. Murphy explain that Bentley had any 23 particular needs for your expertise? 24 A. Yes, he did.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Did Mr. Murphy -- strike that. When you were 2 hired, did Mr. Gyurik assist Mr. Murphy with 3 managing the projects that Bentley 4 Pharmaceuticals had? 5 A. I would have to say indirectly from the work 6 that I produced. In that he was my reporting 7 senior, my work was reviewed by him. 8 Q. Why did you understand it was the most 9 appropriate reporting relationship to have you 10 reporting to Mr. Gyurik? 11 A. Because we were a small company, we had no more 12 than seven employees at the time, and his duties 13 and things that he did were most -- the best 14 aligned to the type of work that I would be 15 doing. 16 Q. Did your reporting relationship have anything to 17 do with a potential impropriety in reporting to 18 your brother-in-law? 19 MS. ABREU: Objection. 20 Q. You may answer the question. 21 A. Not to my knowledge. 22 Q. So would it have been appropriate for you to 23 report to Mr. Murphy, your brother-in-law? 24 MS. ABREU: Objection, calls for</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 speculation.</p> <p>2 Q. You may answer.</p> <p>3 A. I don't know the answer to that, whether it</p> <p>4 would be appropriate or not. Personally, I saw</p> <p>5 no impropriety in any of my employment with</p> <p>6 Bentley.</p> <p>7 Q. Did you receive any employment evaluations while</p> <p>8 you were at Bentley Pharmaceuticals -- have you</p> <p>9 received any employment evaluations during your</p> <p>10 employment at Bentley Pharmaceuticals?</p> <p>11 A. Yes, I have.</p> <p>12 Q. From whom did you receive performance</p> <p>13 evaluations?</p> <p>14 A. From Robert Gyurik while I was reporting to him,</p> <p>15 and subsequent to that, by the new president of</p> <p>16 the company, John Sedor.</p> <p>17 Q. Do you report to Mr. Gyurik today?</p> <p>18 A. No, I don't.</p> <p>19 Q. To whom do you report today?</p> <p>20 A. The president, John Sedor.</p> <p>21 Q. And while Mr. Gyurik provided your performance</p> <p>22 evaluations, how often did you receive them?</p> <p>23 A. Annually.</p> <p>24 Q. Did you receive one for the year 2000?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And how have your performance evaluations been?</p> <p>2 A. Very good.</p> <p>3 Q. On a scale of 1 to 10?</p> <p>4 A. 8.</p> <p>5 Q. Did Mr. Gyurik while he gave you performance</p> <p>6 evaluations identify any particular strengths?</p> <p>7 A. I'm sure he did, but I don't recall any</p> <p>8 specifics.</p> <p>9 Q. Any general strengths?</p> <p>10 A. Again, I'd be speculating on exactly what he</p> <p>11 said. I do know personally that he thought very</p> <p>12 highly of me.</p> <p>13 Q. Did Mr. Gyurik identify any weaknesses that you</p> <p>14 recall?</p> <p>15 A. Not directly as weaknesses, but he would always</p> <p>16 point out areas where, you know, further work</p> <p>17 was necessary.</p> <p>18 Q. And what were those areas?</p> <p>19 A. I can't recall.</p> <p>20 Q. You testified a few moments ago that you thought</p> <p>21 your evaluations on a scale of 1 to 10 were</p> <p>22 about an 8. Why do you say 8?</p> <p>23 A. It's a generalization. We changed our appraisal</p> <p>24 process over the -- when I took over human</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Yes.</p> <p>2 Q. Did you receive one for the year 2001?</p> <p>3 A. Yes.</p> <p>4 Q. '02?</p> <p>5 A. Yes.</p> <p>6 Q. '03?</p> <p>7 A. Yes.</p> <p>8 Q. '04?</p> <p>9 A. Yes.</p> <p>10 Q. '05?</p> <p>11 A. Yes.</p> <p>12 Q. And '06?</p> <p>13 A. Yes -- we're not there on '06 yet.</p> <p>14 Q. What is the first employment evaluation that you</p> <p>15 received from Mr. Sedor?</p> <p>16 A. What is it?</p> <p>17 Q. When was the employment evaluation you received</p> <p>18 from Mr. Sedor?</p> <p>19 A. It was in October of last year, 2005.</p> <p>20 Q. October 2005?</p> <p>21 A. Yes.</p> <p>22 Q. And when did Mr. Sedor join Bentley</p> <p>23 Pharmaceuticals, Incorporated?</p> <p>24 A. August of 2005.</p>	<p style="text-align: right;">Page 33</p> <p>1 resources. I instituted a more standardized</p> <p>2 appraisal process. Prior to that, they were</p> <p>3 less formal. Now, they're more formal. We have</p> <p>4 a formalized grading process now.</p> <p>5 Q. How does that grading process work?</p> <p>6 A. Well, it's a matrix of various areas of grading,</p> <p>7 probably about fifteen different areas, where a</p> <p>8 person is graded from 0 to 4. They're tabulated</p> <p>9 to give a total score, and then performance</p> <p>10 objectives are factored in as well; and a</p> <p>11 complete score is given for each individual.</p> <p>12 Q. And do those performance evaluations serve as a</p> <p>13 basis for salary increases?</p> <p>14 A. Certainly, yes.</p> <p>15 Q. Bonuses?</p> <p>16 A. Yes.</p> <p>17 Q. Grants of stock options?</p> <p>18 A. They factor into it, yes.</p> <p>19 Q. Any other compensation?</p> <p>20 A. They could involve -- based on someone's</p> <p>21 exemplary performance, there could be</p> <p>22 on-the-spot awards or grants or increases</p> <p>23 outside of the annual process.</p> <p>24 Q. I want to come back to one point. Is Mr. Gyurik</p>

9 (Pages 30 to 33)



<p style="text-align: right;">Page 34</p> <p>1 still with Bentley Pharmaceuticals,</p> <p>2 Incorporated?</p> <p>3 A. Yes, he is.</p> <p>4 Q. What position does he hold?</p> <p>5 A. He's the vice president of scientific</p> <p>6 development.</p> <p>7 Q. And did he hold that position --</p> <p>8 A. Excuse me, scientific innovation is his official</p> <p>9 title.</p> <p>10 Q. And did Mr. Gyurik hold that position before</p> <p>11 2004?</p> <p>12 A. Before 2004. He had a different title at that</p> <p>13 time. His title at that time was vice president</p> <p>14 of pharmaceutical development.</p> <p>15 Q. Did Mr. Gyurik's change of title involve any</p> <p>16 change in responsibilities?</p> <p>17 A. Yes, it did.</p> <p>18 Q. And what change in responsibilities did his</p> <p>19 change in title entail?</p> <p>20 A. Well, we brought in another person that</p> <p>21 essentially became the vice president of</p> <p>22 research and development, which was a good chunk</p> <p>23 of the responsibilities that Bob Gyurik had. We</p> <p>24 rechanneled Bob Gyurik's responsibilities more</p>	<p style="text-align: right;">Page 36</p> <p>1 in 2000, do you recall what your salary was?</p> <p>2 A. 93,500.</p> <p>3 Q. And was that more or less than you'd been</p> <p>4 receiving at SAIC?</p> <p>5 A. Yes, more.</p> <p>6 Q. More. Okay. What was your salary when you left</p> <p>7 SAIC?</p> <p>8 A. 82,000.</p> <p>9 Q. Did you receive a bonus in 2000?</p> <p>10 A. Not that I recall, not for 2000.</p> <p>11 Q. You testified earlier that when you were offered</p> <p>12 your job at Bentley Pharmaceuticals, you</p> <p>13 received stock options.</p> <p>14 A. Yes.</p> <p>15 Q. Approximately how many stock options did you</p> <p>16 receive?</p> <p>17 A. Upon initial --</p> <p>18 Q. Upon initial arrival at the company.</p> <p>19 A. 10,000.</p> <p>20 Q. And did you receive any other stock options in</p> <p>21 the year 2000?</p> <p>22 A. No.</p> <p>23 Q. Did you receive any stock --</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 35</p> <p>1 into working with outside collaborations,</p> <p>2 working with patents, things of that nature,</p> <p>3 intellectual property.</p> <p>4 Q. Did you do any work in research and development</p> <p>5 between 2000 and 2005?</p> <p>6 A. Not directly other than support for, you know,</p> <p>7 Bob Gyurik.</p> <p>8 Q. When you say support, what do you mean by</p> <p>9 support?</p> <p>10 A. It's more general support. I'm not a scientist,</p> <p>11 and I was not involved in the technical aspects</p> <p>12 of what they did in research and development.</p> <p>13 Q. And did you provide any other support in regards</p> <p>14 to Bentley Pharmaceuticals employees?</p> <p>15 A. I'm sure I did. I can't recall specifically.</p> <p>16 Q. Did you provide any support to Mr. Murphy?</p> <p>17 A. Of course, yes.</p> <p>18 Q. Mr. Price?</p> <p>19 A. Periodically.</p> <p>20 Q. Mr. Stote?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Hand?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. When you joined Bentley Pharmaceuticals</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. -- in Bentley when you arrived?</p> <p>2 A. No.</p> <p>3 Q. Did you receive any stock in the year 2000 as</p> <p>4 compensation for services to Bentley?</p> <p>5 A. No.</p> <p>6 Q. So if you had to estimate all in, what would you</p> <p>7 estimate your compensation for the year 2000 at</p> <p>8 Bentley was?</p> <p>9 A. 93,500 as prorated for three months, so divide</p> <p>10 that by -- one-quarter of that, essentially.</p> <p>11 Q. And I'm not asking you to do the math on that.</p> <p>12 What value would you attach to the stock</p> <p>13 options?</p> <p>14 A. That's really difficult to say. You have a</p> <p>15 strike price for options, and the value could be</p> <p>16 a lot or it could be zero. So -- and you really</p> <p>17 cannot answer that question as to value.</p> <p>18 Q. Has your compensation increased since the year</p> <p>19 2000?</p> <p>20 A. Yes, it has.</p> <p>21 Q. What is your salary at present?</p> <p>22 A. At present, it is just under 176,000.</p> <p>23 Q. And have you received any additional stock</p> <p>24 options at Bentley Pharmaceuticals,</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 Incorporated?</p> <p>2 A. Yes, I have.</p> <p>3 Q. And how many stock options have you received</p> <p>4 since 2000?</p> <p>5 A. I don't recall the specific number, but it</p> <p>6 varied between 5 and 10,000 annually, no more</p> <p>7 than 10,000 during a year.</p> <p>8 Q. How many stock options do you own now?</p> <p>9 A. 50 to 60,000.</p> <p>10 Q. And were all of those stock options granted to</p> <p>11 you as compensation by Bentley Pharmaceuticals,</p> <p>12 Incorporated?</p> <p>13 A. Yes.</p> <p>14 Q. Have you purchased any stock options yourself?</p> <p>15 A. Have I exercised them? Is that what you're</p> <p>16 saying?</p> <p>17 Q. No. Have you purchased any additional options</p> <p>18 other than those granted to you?</p> <p>19 A. No, I have not.</p> <p>20 Q. Have you exercised any of the options granted to</p> <p>21 you?</p> <p>22 A. No, I have not.</p> <p>23 Q. Do you own any stock in Bentley Pharmaceuticals,</p> <p>24 Incorporated?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. No, no.</p> <p>2 MS. ABREU: Jonathan, we've been going</p> <p>3 for about an hour now. Whenever it's convenient</p> <p>4 for you, if you wouldn't mind taking a break.</p> <p>5 MR. FINE: We can absolutely take a</p> <p>6 break. Should we go off the record?</p> <p>7 THE STENOGRAPHER: Yes.</p> <p>8 (Recess taken from 10:03 a.m. to</p> <p>9 10:16 a.m.)</p> <p>10 MR. FINE: Could you read me back the</p> <p>11 last question and answer?</p> <p>12 (Reporter read back the last question and</p> <p>13 answer.)</p> <p>14 Q. I'd like to ask you a little bit about a subject</p> <p>15 that you testified about earlier, and you</p> <p>16 testified earlier that you had developed or</p> <p>17 facilitated management meetings at Bentley</p> <p>18 Pharmaceuticals, Incorporated. Is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Do you know if Bentley Pharmaceuticals,</p> <p>21 Incorporated held management meetings before you</p> <p>22 were hired?</p> <p>23 A. Yes, they did, but they were rather informal.</p> <p>24 Q. And how did you develop or facilitate the</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes, I do.</p> <p>2 Q. Did you purchase that stock?</p> <p>3 A. Yes, I did.</p> <p>4 Q. When did you purchase that stock?</p> <p>5 A. Prior to joining the company.</p> <p>6 Q. Do you recall approximately the year that you</p> <p>7 purchased that stock?</p> <p>8 A. Probably -- not exactly, but if I had to guess,</p> <p>9 it would have been early in the year of 2000.</p> <p>10 Q. And how many shares of Bentley Pharmaceuticals</p> <p>11 did you purchase early in the year 2000?</p> <p>12 A. Approximately 500.</p> <p>13 Q. And do you own 500 shares today?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Have you ever sold shares in Bentley</p> <p>16 Pharmaceuticals, Incorporated?</p> <p>17 A. No, I have not.</p> <p>18 Q. Have you received any other shares in Bentley</p> <p>19 Pharmaceuticals, Incorporated from any other</p> <p>20 person or corporation?</p> <p>21 A. From any other corporation?</p> <p>22 Q. From any other person or corporation. Has</p> <p>23 anyone given you a gift of shares in Bentley</p> <p>24 Pharmaceuticals, Incorporated?</p>	<p style="text-align: right;">Page 41</p> <p>1 management meetings at Bentley Pharmaceuticals</p> <p>2 after you were hired?</p> <p>3 A. I came up with a format for recording the</p> <p>4 various projects of interest that the company</p> <p>5 was working on and proposed that to management</p> <p>6 of the company. It was initially used, as I</p> <p>7 recall, at a board meeting, and then it kind of</p> <p>8 became a fact of life. We continued using it</p> <p>9 and improved upon it, and it became the format</p> <p>10 that we used at what then became our monthly</p> <p>11 management meetings.</p> <p>12 Q. And how often did Bentley Pharmaceuticals hold</p> <p>13 management meetings before you arrived, if you</p> <p>14 know?</p> <p>15 A. I don't recall. As I said, the most I can</p> <p>16 remember is that they were informal, and I don't</p> <p>17 know whether there was a set schedule or not.</p> <p>18 Q. Was there a set schedule after you arrived?</p> <p>19 A. Yes.</p> <p>20 Q. And who set that schedule?</p> <p>21 A. I did, with agreement from the management team.</p> <p>22 Q. And who was on the management team?</p> <p>23 MS. ABREU: Objection, asked and</p> <p>24 answered.</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Q. And who was on the management team when you set 2 the schedule?</p> <p>3 A. Jim Murphy, CEO and president at the time; 4 Michael Price, our CFO; Dr. Bob Stote, our head 5 of clinical matters; Bob Gyurik, our head of 6 pharmaceutical development; Jordan Horvath, 7 general counsel; Jim Hand, head of business 8 development. I think I got them all.</p> <p>9 Q. Were you a member of the management team?</p> <p>10 A. Yes.</p> <p>11 Q. And where did those monthly meetings take place?</p> <p>12 A. Usually in our conference room.</p> <p>13 Q. And would that be a conference room in Bentley 14 Pharmaceuticals' offices in New Hampshire?</p> <p>15 A. Yes.</p> <p>16 Q. Anywhere else?</p> <p>17 A. Perhaps Jim Murphy's office from time to time.</p> <p>18 Q. And what was the format of those management 19 meetings?</p> <p>20 A. Format was a meeting with a set time. We would 21 have an agenda in the form of a template of 22 projects, which served two purposes. It served 23 as the agenda for each meeting, and it also 24 served as an after-action report with all the</p>	<p style="text-align: right;">Page 44</p> <p>1 discuss them in order that they appeared in the 2 template.</p> <p>3 Q. And how would they be -- how would the items be 4 discussed?</p> <p>5 A. They were primarily an update on the status of 6 the particular project from the primary 7 responsible person or persons for the actions 8 related to that project.</p> <p>9 Q. And was there a time limit to how long the 10 person could discuss that?</p> <p>11 A. There was no set time limit, no, on each.</p> <p>12 Q. Would other members of the management team ask 13 questions of that person?</p> <p>14 MR. FINE: Objection, vague.</p> <p>15 A. If necessary. If it was appropriate, sure, they 16 would ask questions.</p> <p>17 Q. When would it be appropriate?</p> <p>18 A. Whenever there was -- somebody had a question 19 that needed to be answered.</p> <p>20 Q. Earlier, you mentioned that there were ground 21 rules for these meetings. What were those 22 ground rules?</p> <p>23 A. Those are more housekeeping ground rules; being 24 there on time, no food fights, breaks, you know,</p>
<p style="text-align: right;">Page 43</p> <p>1 action items included in it for follow-up after 2 each meeting. The meetings lasted approximately 3 anywhere from an hour to two hours, sometimes 4 longer.</p> <p>5 Q. And to whom -- were those template of projects 6 or templates of projects that you referred to 7 earlier circulated to the management team?</p> <p>8 A. Yes, they were.</p> <p>9 Q. How were they circulated?</p> <p>10 A. Normally by e-mail.</p> <p>11 Q. And would you send those e-mails?</p> <p>12 A. Yes, I would.</p> <p>13 Q. And what was the internal format of those 14 management meetings?</p> <p>15 A. Can you clarify what you mean by "internal"?</p> <p>16 Q. Did a member of the management team open the 17 meeting?</p> <p>18 A. Yes. Well, I opened the meetings.</p> <p>19 Q. And did you follow the template of projects as 20 an agenda in the meetings?</p> <p>21 A. Yes. Normally, they would -- at the opening, 22 they'd set the ground rules, remind people of 23 what we're doing, hopefully stick to a certain 24 time frame, mostly unsuccessful, and generally</p>	<p style="text-align: right;">Page 45</p> <p>1 when we intend to complete the meeting, things 2 of that nature.</p> <p>3 Q. Were there food fights?</p> <p>4 A. I think there are in all meetings.</p> <p>5 Q. Hopefully, we won't have any food fights today. 6 Were those meetings ever heated?</p> <p>7 MS. ABREU: Objection, vague.</p> <p>8 A. What do you mean by heated?</p> <p>9 Q. Do you recall any heated discussion during those 10 meetings?</p> <p>11 A. There was lively discussion at several meetings.</p> <p>12 Q. Do any particular meetings stand out as having 13 been lively?</p> <p>14 A. No, not that I recall, nothing particular.</p> <p>15 Q. Do you recall the subjects of the lively 16 discussions?</p> <p>17 A. No, I don't recall.</p> <p>18 Q. And how would you describe a lively discussion?</p> <p>19 A. A lively discussion where we would have two or 20 more people with their thoughts and ideas 21 wanting to be presented, often all wanting to 22 talk at the same time.</p> <p>23 Q. Did anyone present at those Bentley management 24 meetings ever raise his or her voice?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 A. Not inordinately, no.</p> <p>2 Q. But some?</p> <p>3 A. Sure, some spoke firmly, with resolve.</p> <p>4 Q. Who do you recall speaking firmly, with resolve?</p> <p>5 A. Probably everyone.</p> <p>6 MS. ABREU: Objection, time frame.</p> <p>7 A. From time to time, everyone -- every member of</p> <p>8 the management meeting, including myself.</p> <p>9 Q. Do you recall which subjects you felt you needed</p> <p>10 to speak firmly on, with resolve?</p> <p>11 A. They weren't subject related. My part in that</p> <p>12 was more of a facilitator role to not let things</p> <p>13 get too far out of hand or off track or too far</p> <p>14 on a tangent from what we were there to discuss.</p> <p>15 Q. When you say out of hand, what do you mean?</p> <p>16 A. Just spending too much time on a particular</p> <p>17 topic, too much nonproductive discussion, that</p> <p>18 type of thing.</p> <p>19 Q. Would subjects ever come up other than the</p> <p>20 subjects listed on the template of projects?</p> <p>21 A. Periodically, yes.</p> <p>22 Q. Did you recall those -- do you recall what those</p> <p>23 subjects were?</p> <p>24 A. No, I can't recall specifically.</p>	<p style="text-align: right;">Page 48</p> <p>1 projects?</p> <p>2 A. Yes, or I would offer it up for deletion if</p> <p>3 there was no more action associated with that</p> <p>4 particular item or if it was overcome by events</p> <p>5 or whatever.</p> <p>6 Q. And did you delete those items during the actual</p> <p>7 management meetings?</p> <p>8 A. It was a paper-based thing. I would cross them</p> <p>9 out.</p> <p>10 Q. Would you bring or -- did you bring those</p> <p>11 templates of projects to the meetings</p> <p>12 themselves?</p> <p>13 A. Yes.</p> <p>14 Q. How many copies of the templates of projects did</p> <p>15 you bring to the meetings?</p> <p>16 A. Nine to ten. Enough to cover the people</p> <p>17 attending.</p> <p>18 Q. Did you retain templates of projects after the</p> <p>19 meetings?</p> <p>20 A. Yes.</p> <p>21 Q. Where did you retain those templates of</p> <p>22 projects?</p> <p>23 A. Primarily on my computer and the company network</p> <p>24 drive where I stored my files.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Were the subjects included on subsequent</p> <p>2 templates of projects?</p> <p>3 A. Only if directed to be included.</p> <p>4 Q. And would you include those if directed?</p> <p>5 A. Sure, yes.</p> <p>6 Q. And who would direct you to include those, those</p> <p>7 other subjects?</p> <p>8 A. Generally, in most cases, it would be Jim Murphy</p> <p>9 himself would direct that they be included on</p> <p>10 the report. From time to time, others would as</p> <p>11 well in their particular areas of responsibility, for example, Mike Price for</p> <p>12 financial matters.</p> <p>13 Q. Were you responsible for keeping the template of</p> <p>14 projects?</p> <p>15 A. Yes, I was.</p> <p>16 Q. Did you ever remove anything -- any items from</p> <p>17 the templates of projects?</p> <p>18 A. Yes.</p> <p>19 Q. When did you remove items from the template of</p> <p>20 projects?</p> <p>21 A. Upon direction during the management meetings.</p> <p>22 Q. So you would be directed during the management</p> <p>23 meetings to remove an item from the template of</p> <p>24</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Did he retain the copies of the templates of</p> <p>2 projects that you actually brought with you to</p> <p>3 the meetings?</p> <p>4 A. Could you clarify whether you mean paper or</p> <p>5 electronic or what?</p> <p>6 Q. Okay. You testified a few moments ago that you</p> <p>7 would bring nine to ten copies of the templates</p> <p>8 of projects to the meeting. Were those paper</p> <p>9 copies?</p> <p>10 A. Yes.</p> <p>11 Q. And you also testified that if directed during a</p> <p>12 meeting to remove an item, you would cross it</p> <p>13 out on your paper copy; is that correct?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Did you retain that paper copy after the</p> <p>16 management meeting?</p> <p>17 A. Only for a period of time as necessary to</p> <p>18 incorporate the updates and changes in the</p> <p>19 subsequent template, which would be used and</p> <p>20 distributed as an after-action report to follow</p> <p>21 up on the action items. And subsequently, that</p> <p>22 template would be used for the next management</p> <p>23 meeting, and then I would dispose of any rough</p> <p>24 copies with my notes and things like that on it.</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 Q. Did you take notes during those management 2 meetings? 3 A. Certainly, yes. 4 Q. Did you take notes on the templates of projects? 5 A. Yes. 6 Q. Did you take notes anywhere else? 7 A. Yellow tablet. 8 Q. And by yellow tablet, you mean a yellow pad of 9 paper or a writing tablet; is that correct? 10 A. Yes. 11 Q. Did you retain those notes? 12 A. No. 13 Q. What did you do with those notes? 14 A. I destroyed them. 15 Q. When did you destroy those notes? 16 A. Shortly after I incorporated all the changes 17 into the electronic copy, which I did retain. 18 Q. So the electronic copy of those templates of 19 projects would be or were accurate reflections 20 of your notes from the meeting and those things 21 that you were directed to add or delete from the 22 template of projects at the meetings; is that 23 correct? 24 A. To the best of my recollection. If you're</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Did you receive information that you included in 2 those templates of projects from any events that 3 took place outside of the management meetings? 4 MS. ABREU: Objection, vague. 5 Q. Do you understand my question? 6 A. If you could be more specific what you mean. 7 Q. Did any of the persons on Bentley's management 8 team ask you to include items or events on the 9 template of projects outside of the context of 10 management meetings? 11 A. No. 12 Q. So are you testifying that Mr. Price or 13 Mr. Murphy never asked you to include something 14 on the template of projects outside of the 15 context of the management meeting? 16 A. To the best of my recollection, that would not 17 normally occur. Any direction to put anything 18 in the report, as I recall, occurred during the 19 management meetings. 20 Q. Do you think you would recall any directions to 21 include things on the template of projects that 22 occurred outside of the management meetings? 23 MS. ABREU: Objection, calls for 24 speculation.</p>
<p style="text-align: right;">Page 51</p> <p>1 asking me whether the whole thing was completely 2 accurate, I can't answer that, but they were my 3 accurate reflection of what took place during 4 the meeting, yes. 5 Q. But you tried to keep them accurately, is that 6 correct? 7 A. Yes. 8 Q. Not inaccurately? 9 A. Uh-huh. 10 Q. Was your compilation or -- was your keeping of 11 those templates of projects part of your regular 12 responsibilities at Bentley Pharmaceuticals -- 13 A. Yes, it was. 14 Q. -- Incorporated? Did you base them on -- strike 15 that. You've testified you based your changes 16 to those templates of projects on events that 17 happened during Bentley's management meetings; 18 is that correct? 19 A. Yes. 20 Q. Did you receive information that you included in 21 those templates of projects from any other 22 employees or executives at Bentley than the ones 23 who were involved in the management meetings? 24 A. No.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I probably would not recall. 2 Q. Okay. Did anyone assist you in compiling the 3 template of projects? 4 A. No. 5 Q. You did that yourself? 6 A. Yes, I did. 7 Q. Did a secretary assist you with that? 8 A. No. 9 MR. FINE: Let the record reflect that 10 the witness pointed to himself. 11 Q. So it's your testimony that no secretary 12 assisted you with putting together the template 13 of projects? 14 MS. ABREU: Objection, asked and 15 answered. 16 A. No. 17 Q. Did you communicate with anyone at Bentley 18 Pharmaceuticals, Incorporated about the contents 19 of the template of projects? 20 A. Yes. 21 Q. With whom did you communicate? 22 A. Members of the management team. 23 Q. Did you communicate with anyone at Laboratorios 24 Belmac about the contents of the management</p>

14 (Pages 50 to 53)



<p style="text-align: right;">Page 54</p> <p>1 meetings?</p> <p>2 A. No.</p> <p>3 Q. How much time did you spend compiling the</p> <p>4 template of projects?</p> <p>5 A. Per each meeting, approximately two to two and a</p> <p>6 half hours.</p> <p>7 Q. And after you made changes to the template of</p> <p>8 projects following a management meeting, did you</p> <p>9 seek to confirm the accuracy of your changes</p> <p>10 with anyone on the management team?</p> <p>11 A. No.</p> <p>12 Q. Did anyone on the management team ever inform</p> <p>13 you that a change that you had made was</p> <p>14 inaccurate?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you recall whether the template of projects</p> <p>17 was kept as -- was kept in the ordinary course</p> <p>18 of Bentley's business activities?</p> <p>19 A. I don't understand your question.</p> <p>20 Q. Would you describe the template of projects as a</p> <p>21 document that was kept in the ordinary course of</p> <p>22 Bentley's business?</p> <p>23 A. Yes.</p> <p>24 Q. You testified earlier that the purpose of the</p>	<p style="text-align: right;">Page 56</p> <p>1 October were marked Exhibit Number 1 for</p> <p>2 identification.)</p> <p>3 Q. And while you're taking a moment to review that,</p> <p>4 I'd like to identify the exhibit as an e-mail</p> <p>5 and attached document bearing Production Numbers</p> <p>6 BENTL 022861 through 865.</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Fitzgibbons, have you had a chance to look</p> <p>9 at this exhibit?</p> <p>10 A. Yes, I have.</p> <p>11 Q. Do you recognize this exhibit?</p> <p>12 A. I recognize it, sure.</p> <p>13 Q. What is this document?</p> <p>14 A. This is a report from our 24, October, 2000</p> <p>15 management meeting.</p> <p>16 Q. And so the record is clear, the report begins on</p> <p>17 the page marked BENTL 022862; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the page before that marked 861 is an</p> <p>20 e-mail; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And that's an e-mail from you?</p> <p>23 A. Yes, it is.</p> <p>24 Q. To Mr. Murphy?</p>
<p style="text-align: right;">Page 55</p> <p>1 template of projects was to assist Mr. Murphy</p> <p>2 in -- strike that. What was the purpose of</p> <p>3 keeping the project -- sorry, the template of</p> <p>4 projects?</p> <p>5 A. I think I answered that earlier, but it was</p> <p>6 basically to keep track of all of the major</p> <p>7 discussion items and projects that the company</p> <p>8 was working on, Bentley Pharmaceuticals.</p> <p>9 Q. And was it to keep the management team apprised</p> <p>10 of the status of those projects?</p> <p>11 A. Yes, it was, essentially to keep us all on the</p> <p>12 same page, if you understand what I mean.</p> <p>13 Q. Was it to facilitate management meeting</p> <p>14 discussions?</p> <p>15 A. Certainly, yes.</p> <p>16 Q. Okay. I'd like to show you a document. And the</p> <p>17 process for this is I'll hand it to the court</p> <p>18 reporter, who will mark it as an exhibit, and</p> <p>19 she'll then hand it to you. I'll also hand a</p> <p>20 copy to Miss Abreu, and then we'll discuss it.</p> <p>21 A. Okay.</p> <p>22 (Copy of E-mail to Mr. Murphy by</p> <p>23 Mr. Fitzgibbons, dated November 8, 2000,</p> <p>24 and Attached Project Status Report 24</p>	<p style="text-align: right;">Page 57</p> <p>1 A. That's what it appears to be.</p> <p>2 Q. And do you recognize the report that you</p> <p>3 referred to a moment ago as an attachment to</p> <p>4 that e-mail?</p> <p>5 A. It doesn't say attachment, but I assume it is.</p> <p>6 Q. Is this report what you've been referring to in</p> <p>7 our discussions a moment ago as a template of</p> <p>8 projects?</p> <p>9 A. Yes, it is.</p> <p>10 Q. And did you compile this template of projects?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Did you compile this template of projects based</p> <p>13 on information that you received at a Bentley</p> <p>14 management meeting from other Bentley employees?</p> <p>15 A. To the best of my recollection, this was from</p> <p>16 the management meeting of 24, October, 2000, as</p> <p>17 it states on the title of that Page 862.</p> <p>18 Q. And did you compile this template of projects in</p> <p>19 or around October 24 --</p> <p>20 A. Yes.</p> <p>21 Q. -- 2000? And was it part of your job to compile</p> <p>22 this template of projects?</p> <p>23 A. Yes. I made it part of my job. This was one of</p> <p>24 the first, initial ones, as I only reported to</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 the company on the 2nd of October.</p> <p>2 Q. Okay. And this is -- is this the first report</p> <p>3 that you recall doing?</p> <p>4 A. I'm not sure. It may be the first or the</p> <p>5 second, but it's close to the startup.</p> <p>6 Q. And the report is divided into three columns; is</p> <p>7 that correct, a column marked Topic --</p> <p>8 A. Correct.</p> <p>9 Q. -- a column marked Schedule, and a column marked</p> <p>10 Priority? And if you look at the column marked</p> <p>11 Priority, there are a number of letters for each</p> <p>12 row in that column?</p> <p>13 A. Yes.</p> <p>14 Q. And what do those letters correspond to?</p> <p>15 A. That was my attempt to prioritize the projects,</p> <p>16 and as I recall, purely my attempt to prioritize</p> <p>17 them, A being the highest, C being the lowest.</p> <p>18 Q. Did you discuss that attempt to prioritize</p> <p>19 them -- the projects indicated in this template</p> <p>20 of projects with anyone else at Bentley</p> <p>21 Pharmaceuticals?</p> <p>22 A. As I recall, it was either the first or the</p> <p>23 second management meeting where it was directed</p> <p>24 that we try, attempt to prioritize them. So I</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Do you recall that meeting at all?</p> <p>2 A. No, not really.</p> <p>3 Q. Do you recall who attended that meeting?</p> <p>4 A. Not -- I would be guessing. I don't know</p> <p>5 specifically. I didn't -- it wasn't a matter of</p> <p>6 record to document the attendees at each</p> <p>7 meeting. We were generally -- it was generally</p> <p>8 the management team as I specified earlier,</p> <p>9 perhaps from time to time with one or two</p> <p>10 persons absent.</p> <p>11 Q. Do you recall if anyone was absent at the</p> <p>12 October 24th meeting?</p> <p>13 A. No, I don't.</p> <p>14 Q. And your job was to compile this template of</p> <p>15 projects accurately; is that correct?</p> <p>16 MS. ABREU: Objection, asked and</p> <p>17 answered.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. I'd like to show you another document, if</p> <p>20 that's all right. Actually, do you recall --</p> <p>21 I've asked that. Strike that, please.</p> <p>22 MR. FINE: If you could mark this as</p> <p>23 Exhibit 2.</p> <p>24 (Bentley Pharmaceuticals Project Status</p>
<p style="text-align: right;">Page 59</p> <p>1 was instructed to do that, and I did my best to</p> <p>2 do that.</p> <p>3 Q. And do you recall who instructed you to</p> <p>4 prioritize these topics?</p> <p>5 A. Not exactly. I think it was a consensus of the</p> <p>6 team.</p> <p>7 Q. Okay. And do you recall anyone expressing any</p> <p>8 disagreement about your prioritization of these</p> <p>9 topics?</p> <p>10 A. Not immediately.</p> <p>11 Q. But subsequently?</p> <p>12 A. Subsequently, the priority was dispensed with as</p> <p>13 somewhat meaningless. It became irrelevant.</p> <p>14 Q. And do you recall when it was determined that</p> <p>15 the priority was irrelevant?</p> <p>16 A. Not exactly. I would guess probably after three</p> <p>17 to four management meetings at the most.</p> <p>18 Q. And do you recall why it was determined that</p> <p>19 prioritization of these projects was irrelevant?</p> <p>20 A. Because the priority kept changing, which made</p> <p>21 it become irrelevant.</p> <p>22 Q. Can you tell me anything about the October 24th</p> <p>23 management meeting?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 61</p> <p>1 Report, October 18, 2001 was marked</p> <p>2 Exhibit Number 2 for identification.)</p> <p>3 MR. FINE: And while the witness is</p> <p>4 reviewing the document, I'll identify it for the</p> <p>5 record. It's a document indicated -- labeled</p> <p>6 with production numbers BENTL 023097 through</p> <p>7 100, so through BENTL 023100.</p> <p>8 Q. Mr. Fitzgibbons, do you recognize this document?</p> <p>9 A. Yes.</p> <p>10 Q. Have you seen this document before?</p> <p>11 A. I'm sure I have since I drafted it.</p> <p>12 Q. Okay. What is this document?</p> <p>13 A. It's a project status report from our</p> <p>14 October 18th, 2001 management meeting.</p> <p>15 Q. And is a project -- is this project status</p> <p>16 report another one of the templates of projects</p> <p>17 that we were referring to earlier?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And did you draft this project status report</p> <p>20 based on information that you received from</p> <p>21 other Bentley employees in the management</p> <p>22 meeting?</p> <p>23 A. Yes.</p> <p>24 Q. And it was part of your job at Bentley to</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 compile this report; is that correct?</p> <p>2 MS. ABREU: Objection, asked and</p> <p>3 answered.</p> <p>4 A. Yes.</p> <p>5 Q. And was this project status report kept as a</p> <p>6 record of Bentley's regular business?</p> <p>7 A. Yes.</p> <p>8 Q. Now, I showed you a few moments ago a project --</p> <p>9 I think it was called a management meeting,</p> <p>10 Bentley Pharmaceuticals, Incorporated,</p> <p>11 management meeting which you identified as a</p> <p>12 template of projects; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And the format appears to have changed between</p> <p>15 that template of projects and this project</p> <p>16 status report; is that correct?</p> <p>17 A. That's correct.</p> <p>18 MS. ABREU: And, Jonathan, to clarify</p> <p>19 for the record, can we agree that what you</p> <p>20 referred to as the prior management meeting</p> <p>21 template is Exhibit 1 and the subsequent is</p> <p>22 Exhibit 2?</p> <p>23 MR. FINE: That's correct.</p> <p>24 Q. And could you explain the changes in format to</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Okay. I'd like to show you another exhibit.</p> <p>2 (Copy of E-mail to Mr. Price, et al. by</p> <p>3 Mr. Fitzgibbons, dated December 15,</p> <p>4 2000, and Bentley Pharmaceuticals</p> <p>5 Project Status Report - 11 December was</p> <p>6 marked Exhibit Number 3 for</p> <p>7 identification.)</p> <p>8 MR. FINE: While the witness is</p> <p>9 reviewing the document, I'll identify it for the</p> <p>10 record. It's a document consisting of an e-mail</p> <p>11 and a project status report marked -- and the</p> <p>12 entire document is marked BENTL 022269 through</p> <p>13 275.</p> <p>14 Q. Mr. Fitzgibbons, do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Q. Have you seen this document before?</p> <p>17 A. Yes.</p> <p>18 Q. Where have you seen this document before?</p> <p>19 A. I drafted this report.</p> <p>20 Q. Is this another of the template of projects for</p> <p>21 Bentley Pharmaceuticals project status reports</p> <p>22 to which we've been referring earlier?</p> <p>23 A. Yes, it is.</p> <p>24 Q. And did you compile this Bentley Pharmaceuticals</p>
<p style="text-align: right;">Page 63</p> <p>1 me?</p> <p>2 A. Sure. You will find that the format changes</p> <p>3 over time. This won't be the last change. That</p> <p>4 we eliminated the priority. We eliminated the</p> <p>5 schedule, and we just changed that with an</p> <p>6 action calling. So we had the project and</p> <p>7 status, which was equated to the previous topic,</p> <p>8 and just combined everything in an action.</p> <p>9 That's all we were interested in at the time.</p> <p>10 Q. Okay. And had you written Bentley</p> <p>11 Pharmaceuticals project status reports for each</p> <p>12 management meeting that had taken place between</p> <p>13 November 2000 and October 2001?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall any management meetings at which</p> <p>16 you did not present a template of projects or</p> <p>17 Bentley Pharmaceuticals project status report?</p> <p>18 A. No.</p> <p>19 Q. Okay. And do you recall making any changes to</p> <p>20 this project status report after the</p> <p>21 October 18th, 2001 meeting, before the</p> <p>22 meeting -- before the next management meeting?</p> <p>23 A. No, I don't recall any changes that I've made to</p> <p>24 this.</p>	<p style="text-align: right;">Page 65</p> <p>1 project status report based on information that</p> <p>2 you received in a Bentley Pharmaceuticals</p> <p>3 management meeting?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Okay. And was it part of your job to compile</p> <p>6 this report?</p> <p>7 A. Yes, it was.</p> <p>8 Q. And this is a report that's a little bit earlier</p> <p>9 than Exhibit 2, which I showed you earlier.</p> <p>10 A. That's correct.</p> <p>11 Q. And can you tell me the date of this report?</p> <p>12 A. 11th, December, 2000.</p> <p>13 Q. 2000. And the cover e-mail is from you,</p> <p>14 Mr. Fitzgibbons; is that correct?</p> <p>15 A. Yes, it is.</p> <p>16 Q. And it's sent to a number of persons. Could you</p> <p>17 identify those persons?</p> <p>18 A. Mike Price, the chief financial officer; Jim</p> <p>19 Murphy, the president and CEO; Jordan Horvath,</p> <p>20 general counsel; Bob Stote, head of clinical</p> <p>21 affairs.</p> <p>22 Q. Part of the text -- do you recall sending this</p> <p>23 e-mail?</p> <p>24 A. No.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Q. Part of the text of the e-mail asks, "Please let 2 me know if there are any changes required." Do 3 you know to what you were referring? 4 A. Initially, this is one of the early reports. It 5 appears that it may have been the second or 6 third report. As I recall, I was seeking input 7 as to the accuracy of information that I 8 recorded since I was relatively new to this 9 responsibility. 10 Q. Do you recall receiving any response to your 11 e-mail? 12 A. No, I don't. 13 Q. Sitting here today, do you recall any response 14 to your e-mail? 15 A. No. 16 Q. And so as best you understand, this project 17 status report of Bentley Pharmaceuticals was 18 accurate to the satisfaction of Mr. Price, 19 Mr. Murphy, Mr. Horvath, and Mr. Stote? 20 MS. ABREU: Objection, calls for 21 speculation. 22 A. I don't know if they were satisfied with it, and 23 I'm unaware of any changes that were recommended 24 or made to this.</p>	<p style="text-align: right;">Page 68</p> <p>1 Pharmaceuticals project status report a template 2 of projects that we've been discussing earlier 3 today? 4 A. Yes, it is. 5 Q. And did you receive the information in this 6 report from other Bentley Pharmaceuticals 7 employees at a management meeting? 8 A. Yes, I did. 9 Q. Okay. And did you compile this report in or 10 around the time of the November 6th, 2001 11 management meeting? 12 A. Yes, I did. 13 Q. And was it part of your job to compile this 14 report? 15 A. Yes, it was. 16 Q. And is this report a business record of Bentley 17 Pharmaceuticals that was kept in its ordinary 18 course of business? 19 A. Yes, it is. 20 Q. Do you recall anything about the November 6th, 21 2001 management meeting? 22 A. No. 23 Q. Do you recall who attended the management 24 meeting?</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Do you recall them expressing any 2 dissatisfaction with this report? 3 A. No, I don't. 4 Q. Okay. I'd like to show you another exhibit. 5 (Copy of E-mail to Mr. Murphy by 6 Mr. Fitzgibbons, dated November 15, 7 2001, and Bentley Pharmaceuticals 8 Project Status Report - November 6, 2001 9 was marked Exhibit Number 4 for 10 identification.) 11 MR. FINE: While the witness is 12 reviewing this exhibit, I'll identify it for the 13 record. It's a covering e-mail and Bentley 14 Pharmaceuticals project status report, and the 15 document -- the exhibit is numbered 16 consecutively BENTL 022454 through 459. 17 Q. Mr. Fitzgibbons, do you recognize this document? 18 A. Yes. 19 Q. Have you seen this document before? 20 A. Yes. 21 Q. What is this document? 22 A. It's a report from the November 6th, 2001 23 management meeting that I drafted. 24 Q. And is this report -- this Bentley</p>	<p style="text-align: right;">Page 69</p> <p>1 A. No. 2 Q. Do you recall any communications you had with 3 anyone on the management team after this 4 management meeting? 5 A. No, I don't. 6 Q. As best you can recall, this project status 7 report of Bentley Pharmaceuticals is your best 8 contemporaneous recollection of what occurred at 9 that management meeting? 10 MS. ABREU: Objection, calls for 11 speculation. The witness has stated he does not 12 recall anything about that meeting. 13 Q. You can answer. 14 A. As stated, I don't recall anything specific 15 about this meeting. 16 Q. But this document reflects your understanding at 17 the time, is that correct? 18 MS. ABREU: Objection, calls for 19 speculation. 20 A. It reflects what occurred at that meeting, not 21 my understanding, to the best of my ability. 22 Q. And it was your job to write those things down 23 accurately, not inaccurately; is that correct? 24 A. It was.</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 MR. FINE: Okay. We can take a short</p> <p>2 break, if you'd like.</p> <p>3 MS. ABREU: Sure.</p> <p>4 (Recess taken from 11:00 a.m. to</p> <p>5 11:13 a.m.)</p> <p>6 Q. Mr. Fitzgibbons, before the break, we were</p> <p>7 discussing a number of Bentley Pharmaceuticals</p> <p>8 project status reports, and I'd like to ask you</p> <p>9 a little bit about how you recall discussions</p> <p>10 about these projects and their status.</p> <p>11 Earlier today, you testified that</p> <p>12 individuals at Bentley's management meetings</p> <p>13 discussed the subjects that they were</p> <p>14 responsible for; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. How is their responsibility indicated, if you</p> <p>17 look at Exhibit 4, in the Bentley</p> <p>18 Pharmaceuticals project status report?</p> <p>19 A. In two ways. In the text of the left-hand</p> <p>20 column, it may indicate responsibility by name,</p> <p>21 and also in the Action column, it would normally</p> <p>22 indicate a person's name, one or more persons.</p> <p>23 Q. And if you look at the first item, Pfizer, do</p> <p>24 you recall who reported on that item?</p>	<p style="text-align: right;">Page 72</p> <p>1 (Reporter read back the last question.)</p> <p>2 MS. ABREU: And I'm going to object as</p> <p>3 calling for speculation.</p> <p>4 A. I really don't recall any discussion related to</p> <p>5 this. I can only read from the text that I see</p> <p>6 of the people responsible for the action most</p> <p>7 likely would have been involved with the</p> <p>8 discussion. That's the only thing I can deduce.</p> <p>9 Q. Thank you. I'd like to show you another</p> <p>10 exhibit.</p> <p>11 (Copy of E-mail to Mr. Murphy by</p> <p>12 Mr. Fitzgibbons, dated November 15,</p> <p>13 2001, and Bentley Pharmaceuticals</p> <p>14 Project Status Report - November 6, 2001</p> <p>15 was marked Exhibit Number 5 for</p> <p>16 identification.)</p> <p>17 MR. FINE: And while the witness is</p> <p>18 reviewing the exhibit, I'll identify it for the</p> <p>19 record as a cover e-mail and Bentley</p> <p>20 Pharmaceuticals project status report,</p> <p>21 consecutively numbered beginning BENTL 022401</p> <p>22 through 406.</p> <p>23 A. Sorry.</p> <p>24 Q. Mr. Fitzgibbons, do you recognize this document?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Mostly -- let's see -- Bob Gyurik.</p> <p>2 Q. And did you have any reporting responsibility on</p> <p>3 that subject?</p> <p>4 A. Only with regard to a contractual agreement.</p> <p>5 Q. And the second subject, do you recall who</p> <p>6 reported on that?</p> <p>7 A. Number 2, Glaxo SmithKline?</p> <p>8 Q. That's correct.</p> <p>9 A. No, I don't recall specifically who talked about</p> <p>10 that subject.</p> <p>11 Q. If you look at the fifth subject, Novartis, that</p> <p>12 appears to be broken down into two large bullet</p> <p>13 points, and under the first of those large</p> <p>14 bullet points, three separate items. Is that</p> <p>15 correct?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Do you recall who reported on those items?</p> <p>18 A. Only by what I read here in the Action column.</p> <p>19 Q. And what's your understanding of who reported on</p> <p>20 the first bullet point, antifungal lacquer?</p> <p>21 A. Could you repeat that, please? I'm sorry.</p> <p>22 Q. Who do --</p> <p>23 MR. FINE: Actually, could the court</p> <p>24 reporter read back the question?</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes, I do.</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. Yes, I have.</p> <p>4 Q. Can you identify this document?</p> <p>5 A. It's the project status report from our</p> <p>6 November 20th, 2001 management meeting.</p> <p>7 Q. And did you prepare this project status report?</p> <p>8 A. Yes.</p> <p>9 Q. And did you prepare this Bentley Pharmaceuticals</p> <p>10 project status report around -- at or around the</p> <p>11 time November 20th, 2001?</p> <p>12 A. Yes, I did.</p> <p>13 Q. And was it part of your job to prepare this</p> <p>14 project status report?</p> <p>15 A. Yes.</p> <p>16 Q. And was this project status report kept by</p> <p>17 Bentley Pharmaceuticals in the ordinary course</p> <p>18 of its business?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall anything about the November 20th,</p> <p>21 2001 management meeting?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you recall who attended the management</p> <p>24 meeting?</p>

19 (Pages 70 to 73)



<p style="text-align: right;">Page 74</p> <p>1 MS. ABREU: Objection, calls for 2 speculation. 3 Q. You can answer the question. 4 A. I don't recall specifically. I might add that 5 the e-mail is directed to members of the 6 management meeting at that time. Whether they 7 were present or not, they would receive a copy 8 of the report. 9 Q. And this is your best recollection from the 10 time -- are there any other documents at the 11 time that would better reflect your 12 understanding of what occurred at that 13 management meeting? 14 MS. ABREU: Objection, vague. 15 A. The short answer, no. 16 Q. Do you know of any notes that reflect what took 17 place at that meeting? 18 A. No. 19 Q. Do you recall seeing any e-mail about what took 20 place at that meeting? 21 A. No. 22 Q. Do you recall speaking with anyone at Bentley 23 Pharmaceuticals about what took place at that 24 meeting?</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. ABREU: Objection, asked and 2 answered. 3 A. No, I don't. 4 Q. Did anyone ask you to schedule a management 5 meeting in -- at the end of November of 2001? 6 A. At the end of November? 7 Q. On November 20th, 2001. 8 A. I don't understand your question. 9 Q. Okay. Did anyone ask you to schedule two 10 management meetings in November 2001? 11 A. Not that I recall. 12 Q. Did -- was it more usual to have a management 13 meeting at the beginning of a month or the end 14 of a month? 15 A. Neither. 16 Q. And sitting here today, you have no recollection 17 of why there were two management meetings in 18 November 2001 -- 19 MS. ABREU: Objection, asked and 20 answered. 21 Q. -- is that correct? 22 A. No, I don't have any recollection. 23 Q. I'd like to turn your attention to another 24 document.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. No. 2 Q. Do you know if there were any management 3 meetings between November 20th, 2001 and 4 November 6th, 2001? 5 A. Between the 6th and the 20th of November, 2001? 6 Q. Uh-huh. 7 A. No, I don't know of any other meetings that took 8 place. 9 Q. You testified earlier today that Bentley 10 Pharmaceuticals management meetings took place 11 on a monthly basis; is that correct? 12 A. That's correct. 13 Q. Do you know why there were two management 14 meetings in November of 2001? 15 A. No, I don't. This was -- appears to be a little 16 unusual that we had two in one month, but I 17 don't know the reason for it. 18 Q. And you testified earlier today that you were 19 responsible for scheduling management 20 meetings -- 21 A. Yes. 22 Q. -- is that correct? Do you recall why you 23 scheduled two management meetings for November 24 2001?</p>	<p style="text-align: right;">Page 77</p> <p>1 (Copy of E-mail to Mr. Murphy, et al. by 2 Mr. Fitzgibbons, dated January 17, 2002, 3 and Bentley Pharmaceuticals Project 4 Status Report - January 11, 2002 was 5 marked Exhibit Number 6 for 6 identification.) 7 MR. FINE: And while the witness is 8 reviewing the document that the court reporter 9 has marked as Exhibit 6, I will identify it for 10 the record. It is a document consisting of a 11 cover letter and Bentley Pharmaceuticals project 12 status report, consecutively Bates-numbered 13 BENTL 022497 through BENTL 022502. 14 Q. Mr. Fitzgibbons, do you recognize this document? 15 A. Yes, I do. 16 Q. Have you seen this document before? 17 A. Yes, I have. 18 Q. Can you identify this document? 19 A. It's a project status report from a management 20 meeting conducted on January 11th, 2002. 21 Q. Did you draft this document? 22 A. I did, yes. 23 Q. Did you draft this document on or around 24 January 11th, 2002?</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 A. Yes.</p> <p>2 Q. Did you draft this document based on information</p> <p>3 that was discussed at the January 11th, 2002</p> <p>4 management meeting?</p> <p>5 MS. ABREU: Objection, foundation.</p> <p>6 Q. You can answer the question.</p> <p>7 A. The answer is yes.</p> <p>8 Q. And was it part of your job to draft this</p> <p>9 Bentley Pharmaceuticals project status report?</p> <p>10 A. Yes.</p> <p>11 Q. And just to be completely clear, is this project</p> <p>12 status report one of the templates of projects</p> <p>13 that we were discussing earlier this morning?</p> <p>14 A. Yes.</p> <p>15 Q. And just to clean up the record, that was also</p> <p>16 true for Exhibit 5; is that correct?</p> <p>17 A. Yes, it was -- yes, it is.</p> <p>18 Q. So Exhibit 5 was one of the templates of</p> <p>19 projects that we discussed earlier today?</p> <p>20 A. Yes.</p> <p>21 Q. And turning again to Exhibit 6, was this</p> <p>22 document a document that was kept by Bentley</p> <p>23 Pharmaceuticals in the ordinary course of its</p> <p>24 business?</p>	<p style="text-align: right;">Page 80</p> <p>1 was marked Exhibit Number 7 for</p> <p>2 identification.)</p> <p>3 MR. FINE: And while the witness is</p> <p>4 reviewing the exhibit, I'll identify it for the</p> <p>5 record. It is a cover e-mail and Bentley</p> <p>6 Pharmaceuticals project status report,</p> <p>7 consecutively Bates-numbered BENTL 023091</p> <p>8 through 096.</p> <p>9 Q. Are you ready?</p> <p>10 A. I am ready.</p> <p>11 Q. Mr. Fitzgibbons, do you recognize this document?</p> <p>12 A. I do.</p> <p>13 Q. Have you seen this document before?</p> <p>14 A. Yes.</p> <p>15 Q. Can you identify this document?</p> <p>16 A. It's the project status report from our</p> <p>17 management meeting conducted on January 29th,</p> <p>18 2002.</p> <p>19 Q. Mr. Fitzgibbons, did you write this Bentley</p> <p>20 Pharmaceuticals project status report?</p> <p>21 A. Yes.</p> <p>22 Q. And to be clear, this project status report of</p> <p>23 Bentley Pharmaceuticals is one of the templates</p> <p>24 of projects that we were discussing earlier</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 Q. Thank you. Do you recall anything about the</p> <p>3 January 11th, 2002 management meeting?</p> <p>4 A. The weather was cold. No, I don't recall.</p> <p>5 Q. How do you recall that?</p> <p>6 A. I don't recall.</p> <p>7 Q. Okay. Do you recall who attended that</p> <p>8 management meeting?</p> <p>9 A. I do not.</p> <p>10 Q. Did you discuss the contents of this Bentley</p> <p>11 Pharmaceuticals project status report with any</p> <p>12 other employees of Bentley Pharmaceuticals?</p> <p>13 A. No.</p> <p>14 Q. Did you receive any comments on this Bentley</p> <p>15 Pharmaceuticals project status report from any</p> <p>16 other employees of Bentley Pharmaceuticals?</p> <p>17 A. No, I did not.</p> <p>18 Q. And I'd like to show you one more document.</p> <p>19 MR. FINE: And if the court reporter</p> <p>20 could mark the exhibit as Exhibit 7.</p> <p>21 (Copy of E-mail to Mr. Murphy, et al. by</p> <p>22 Mr. Fitzgibbons, dated February 28,</p> <p>23 2002, and Bentley Pharmaceuticals</p> <p>24 Project Status Report - January 29, 2002</p>	<p style="text-align: right;">Page 81</p> <p>1 today?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And did you write this Bentley Pharmaceuticals</p> <p>4 project status report as part of your ordinary</p> <p>5 job responsibilities?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And was this Bentley Pharmaceuticals project</p> <p>8 status report based on information that you</p> <p>9 received or was communicated to you in the</p> <p>10 Bentley Pharmaceuticals January 29th, 2002</p> <p>11 management meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Was this document -- this Bentley</p> <p>14 Pharmaceuticals project status report kept by</p> <p>15 Bentley Pharmaceuticals in the ordinary course</p> <p>16 of its business?</p> <p>17 A. Yes.</p> <p>18 Q. What do you recall about -- if anything, about</p> <p>19 the January 29th, 2002 management meeting?</p> <p>20 A. I do not recall anything from that meeting.</p> <p>21 Q. Do you recall who attended that meeting?</p> <p>22 A. No, I do not.</p> <p>23 Q. Do you recall the weather at that meeting?</p> <p>24 A. I'm sure it was cold as well, colder.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. Do you recall communicating with anyone 2 at Bentley Pharmaceuticals, Incorporated about 3 the contents of this project status report? 4 A. No. 5 Q. Do you recall having any feedback, written, 6 e-mail, from anyone at Bentley Pharmaceuticals 7 about the contents -- 8 A. No -- 9 Q. -- of this project status report? 10 A. -- I do not. 11 Q. And this project status report was prepared in 12 or around the time of January 29, 2002? 13 A. Yes. 14 Q. Just to clarify the record, do you recall any 15 Bentley Pharmaceuticals management meetings 16 before the year 2004? 17 A. What do you mean by "recall"? 18 Q. Do you recall the contents of any Bentley 19 Pharmaceuticals management meetings before the 20 year 2004? 21 A. Only by reviewing the document that summarized 22 that meeting, this template. 23 Q. This template? 24 A. Off the top of my head, I don't recall the</p>	<p style="text-align: right;">Page 84</p> <p>1 Exhibit 7 -- that you recall? 2 A. Nothing stands out as unique. 3 Q. When you say that nothing stands out that's 4 unique, do you mean nothing stands out about the 5 project or nothing stands out -- well, what do 6 you mean by nothing stands out as unique? 7 A. Well, to be specific, none of the 32 items and 8 the complete end list items of another 7 or 8 9 can I differentiate as one being more important 10 than the other. 11 Q. Do you recall any -- strike that. What do you 12 recall, if anything, about Project Number 1? 13 A. I don't recall anything from memory. It's just 14 that, as I stated earlier from reading the 15 context of this, I do recall some action that 16 was assigned to me and what I was to do with it. 17 Q. And what do you recall about that action? 18 A. I sent some tox studies to Pfizer. 19 Q. So would it be fair to say that you have no 20 independent recollection of any of these items 21 here on Exhibit 7 other than what's written here 22 on the page? 23 A. That's true, yes. 24 Q. And for Exhibit 6, do you have any independent</p>
<p style="text-align: right;">Page 83</p> <p>1 discussion or the contents of any of the 2 meetings unless I were to review these 3 documents. That might spur some recall, but... 4 Q. Has reviewing these documents today spurred any 5 recall of any of these meetings? 6 A. It spurs some memory of the particular projects. 7 It doesn't spur the discussion that occurred. 8 Q. Which particular projects does it spur a memory 9 of? 10 A. Most of them, all of them. 11 Q. So as I've been asking you if you recall any of 12 the particular management meetings, has that -- 13 and your response, as I understand it, has been 14 that you do not; that response is not quite 15 accurate; is that correct? 16 MS. ABREU: Objection, 17 mischaracterizes testimony. 18 A. That's not true. My response was accurate. I'm 19 just saying as I read the particular projects in 20 here, it spurs some recall of the topic. 21 I don't recall any of the discussion relevant to 22 that topic. 23 Q. Are there any particular topics here that you 24 recall -- when I say "here," I'm referring to</p>	<p style="text-align: right;">Page 85</p> <p>1 recollection of these items other than what's 2 written here on the page? 3 A. No, I don't. 4 Q. And for Exhibit 5, do you have any independent 5 recollection of these projects -- 6 A. No -- 7 Q. -- other than what's written on the page? 8 A. -- I do not. 9 Q. And for Exhibit 4, do you have any independent 10 recollection of these projects other than what's 11 written on the page? 12 A. No. 13 Q. And by that, I mean any of the projects. 14 A. No, I don't. 15 Q. And for Exhibit 3, do you have any independent 16 recollection of these projects and items other 17 than what's written on the page? 18 A. No, I do not. 19 Q. And Exhibit 2, do you have any independent 20 recollection of these projects or items other 21 than what's written on the page? 22 A. No, I don't. 23 Q. And for Exhibit 1, do you have any independent 24 recollection of these items or these projects</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 other than what's written on the page?</p> <p>2 A. No, I do not.</p> <p>3 Q. Earlier today, you testified that it was one of</p> <p>4 your responsibilities to draft operational</p> <p>5 summaries on a recurring basis for Bentley</p> <p>6 Pharmaceuticals' board of directors; is that</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And you testified earlier that these were</p> <p>10 quarterly but -- or they were supposed to have</p> <p>11 been drafted quarterly, but in practice,</p> <p>12 sometimes semi-annually; is that correct?</p> <p>13 A. To the best of my recollection, yes.</p> <p>14 Q. Do you recall what triggered the need to draft</p> <p>15 an update to the board on a quarterly or</p> <p>16 semi-annual basis?</p> <p>17 A. I recall that the board of directors had asked</p> <p>18 Jim Murphy that he prepare a summary report of a</p> <p>19 recurring nature to keep them advised of</p> <p>20 operational matters in the company.</p> <p>21 Q. And did Mr. Murphy task you with preparing that</p> <p>22 report?</p> <p>23 A. Yes, he did.</p> <p>24 Q. Okay. And do you recall when the board asked</p>	<p style="text-align: right;">Page 88</p> <p>1 board meetings. It wasn't directly related to</p> <p>2 board meetings.</p> <p>3 Q. From -- tell me a little bit about the process</p> <p>4 of drafting these summary reports.</p> <p>5 MS. ABREU: Objection, vague.</p> <p>6 Q. Would -- I'm sorry to cut you off.</p> <p>7 A. I was going to ask you if you could clarify</p> <p>8 that, what you mean about the process.</p> <p>9 Q. Would Mr. Murphy, for example, ask you in a</p> <p>10 particular month, "Hey, Paul, it's time to draft</p> <p>11 another operations update for the board. Would</p> <p>12 you send me a draft," or something like that?</p> <p>13 A. Initially, that's a true statement. When we</p> <p>14 started up the report, it took a little bit of</p> <p>15 time to determine what format I was to prepare</p> <p>16 it in. I think we ended up on the three general</p> <p>17 areas topics in the report. I would normally --</p> <p>18 when it was time for a new one to be submitted</p> <p>19 and prepared, I would normally prepare a draft,</p> <p>20 usually using the prior report as a basis to</p> <p>21 start from, and update it to the best of my</p> <p>22 knowledge from information that I was aware of</p> <p>23 on that topic, and the primary source of that</p> <p>24 information was from my template report from the</p>
<p style="text-align: right;">Page 87</p> <p>1 Mr. Murphy to prepare summary reports about</p> <p>2 Bentley Pharmaceuticals' operations?</p> <p>3 A. Not specifically. I can't recall when it</p> <p>4 started.</p> <p>5 Q. Do you know if before you were employed at</p> <p>6 Bentley Pharmaceuticals any executive or officer</p> <p>7 of Bentley Pharmaceuticals prepared summary</p> <p>8 reports of Bentley Pharmaceuticals' operations</p> <p>9 for Bentley's board of directors?</p> <p>10 A. I would only be speculating. I don't know that,</p> <p>11 whether that occurred or not.</p> <p>12 Q. And after Mr. Murphy tasked you to prepare</p> <p>13 summary reports of Bentley's operations for</p> <p>14 Bentley's board of directors, did that become</p> <p>15 one of your responsibilities?</p> <p>16 A. Yes, it did.</p> <p>17 Q. And do you recall if these reports were to be</p> <p>18 prepared in advance of board of directors</p> <p>19 meetings?</p> <p>20 A. Not necessarily in advance. They were -- it</p> <p>21 didn't necessarily -- it wasn't a precursor to</p> <p>22 board meetings, if that's what you're asking.</p> <p>23 It was done -- sometimes they did occur prior to</p> <p>24 a board meeting. Sometimes it was in between</p>	<p style="text-align: right;">Page 89</p> <p>1 management meetings. That draft, I would then</p> <p>2 send that to Mr. Murphy, Mr. Murphy would mark</p> <p>3 it up, we'd have a little back and forth on</p> <p>4 correction of things, sometimes just editorial,</p> <p>5 and complete the report. Then once it was</p> <p>6 approved by him, I would send it out normally by</p> <p>7 e-mail, sometimes by fax to the board of</p> <p>8 directors.</p> <p>9 Q. When you sent Mr. Murphy draft summary reports</p> <p>10 for Bentley Pharmaceuticals' board, did you send</p> <p>11 them to him by e-mail or on paper?</p> <p>12 A. Both.</p> <p>13 Q. And would he send them back to you with markups</p> <p>14 via e-mail or in paper?</p> <p>15 A. Both.</p> <p>16 Q. And how would he mark up an e-mail or how did he</p> <p>17 mark up his e-mails?</p> <p>18 A. Normally, he would add or cross out text, add</p> <p>19 text, highlight it in different colors.</p> <p>20 Q. And in paper, how would he send you corrections?</p> <p>21 A. Just a standard markup if it were paper. I</p> <p>22 think most of them were done by e-mail. There</p> <p>23 may have been from time to time they were done</p> <p>24 on paper copy.</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 Q. Did you retain those drafts?</p> <p>2 A. No.</p> <p>3 Q. Do you know if Mr. Murphy retained any of those</p> <p>4 drafts?</p> <p>5 A. No, I'm sure he did not.</p> <p>6 Q. Why are you sure he did not?</p> <p>7 A. Because I know Jim and I know he doesn't like to</p> <p>8 keep a lot of paper, so I would speculate he</p> <p>9 didn't retain them.</p> <p>10 Q. How many drafts would go back and forth</p> <p>11 typically?</p> <p>12 A. Probably no more than two.</p> <p>13 Q. Would Mr. Murphy usually okay your first draft?</p> <p>14 A. No.</p> <p>15 Q. He never okayed your first draft?</p> <p>16 A. No.</p> <p>17 Q. And what typically would his comments be?</p> <p>18 A. Typically, he would add information normally</p> <p>19 that I was totally unaware of, embellish on</p> <p>20 topics that I had no knowledge of, or cross out</p> <p>21 things I was inaccurate about.</p> <p>22 Q. So would it be fair to say that it was a -- that</p> <p>23 these summary reports to Bentley</p> <p>24 Pharmaceuticals' board of directors were</p>	<p style="text-align: right;">Page 92</p> <p>1 anyone other than you, Mr. Murphy, and the</p> <p>2 entire board of directors?</p> <p>3 A. Yes, they were from time to time.</p> <p>4 Q. With whom were they shared in addition to the</p> <p>5 board?</p> <p>6 A. Mike Price reviewed a few. Jordan Horvath, as I</p> <p>7 recall, in the past.</p> <p>8 Q. Anyone else?</p> <p>9 A. I think that's it that I recall.</p> <p>10 Q. Did you take any steps to ensure that the</p> <p>11 information that you were providing to the board</p> <p>12 of directors was accurate?</p> <p>13 A. Yes.</p> <p>14 Q. What steps did you take?</p> <p>15 A. I sent it to Mr. Murphy.</p> <p>16 Q. And were you aware of any steps that Mr. Murphy</p> <p>17 took to ensure that the information you were</p> <p>18 providing to the board of directors was</p> <p>19 accurate?</p> <p>20 MS. ABREU: Objection, calls for</p> <p>21 speculation.</p> <p>22 MR. FINE: No, I'm asking him if he</p> <p>23 was aware of any.</p> <p>24 A. No, I was not aware.</p>
<p style="text-align: right;">Page 91</p> <p>1 partially drafted by you and partially by</p> <p>2 Mr. Murphy?</p> <p>3 MS. ABREU: Objection,</p> <p>4 mischaracterizes his testimony.</p> <p>5 Q. You can answer.</p> <p>6 A. They weren't partially. It was a final approved</p> <p>7 document by Jim Murphy. I had no responsibility</p> <p>8 for the approval of it. My responsibility was</p> <p>9 to just collect the input, put it in the</p> <p>10 document in the form of a draft, and then take</p> <p>11 his changes and make those changes.</p> <p>12 Q. Okay. And what did you understand the purpose</p> <p>13 of these summary reports to Bentley</p> <p>14 Pharmaceuticals' board of operations -- board of</p> <p>15 directors were?</p> <p>16 A. Just as a general update on the status of things</p> <p>17 going on at the company of interest to the</p> <p>18 board.</p> <p>19 Q. Anything else?</p> <p>20 A. No.</p> <p>21 Q. Do you know if they were shared with the entire</p> <p>22 board of directors?</p> <p>23 A. Yes, they were.</p> <p>24 Q. Okay. Do you know if they were shared with</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Okay. Are you -- are you okay?</p> <p>2 A. Oh, I'm fine.</p> <p>3 Q. Okay.</p> <p>4 A. Do I look something?</p> <p>5 Q. Are you aware of any inaccuracies in the</p> <p>6 information that was presented to Bentley</p> <p>7 Pharmaceuticals' board of directors in these</p> <p>8 summary reports?</p> <p>9 A. No, I'm not.</p> <p>10 Q. Do you still prepare summary reports for Bentley</p> <p>11 Pharmaceuticals' board of directors?</p> <p>12 A. I do not, no.</p> <p>13 Q. When did your responsibility for drafting</p> <p>14 reports or preparing reports for Bentley</p> <p>15 Pharmaceuticals' board of directors end?</p> <p>16 A. I don't recall. I'd have to look back in my</p> <p>17 electronic records to find out when the last one</p> <p>18 I submitted was.</p> <p>19 Q. Do you recall if it was in or around 2005?</p> <p>20 A. No, I don't recall 2005. To the best of my</p> <p>21 recollection, I think it was earlier than that,</p> <p>22 prior to that.</p> <p>23 Q. Do you think that it was in or around the time</p> <p>24 that your responsibilities changed?</p>

24 (Pages 90 to 93)



Page 94

1 MS. ABREU: Objection, calls for  
2 speculation.  
3 A. I really don't recall when. It had no relevance  
4 on my responsibilities -- my responsibility  
5 changed. Since I carried that responsibility  
6 with me from its inception to the date that it  
7 ended.  
8 Q. Do you know if anyone prepares summary reports  
9 for Bentley Pharmaceuticals' board of directors  
10 now?  
11 A. I'm not aware of.  
12 MR. FINE: Okay. Could we take a  
13 quick break? Thanks.  
14 (Discussion off the record)  
15 (Recess taken from 11:50 a.m. to  
16 11:57 a.m.)  
17 Q. Mr. Fitzgibbons, we've been discussing some of  
18 the -- we've been discussing the subject of  
19 reports that Mr. Murphy asked you to prepare to  
20 keep Bentley Pharmaceuticals' board of directors  
21 informed about Bentley Pharmaceuticals  
22 operations; is that correct?  
23 A. Yes, that's right.  
24 Q. Okay. And I'd like to show you a document.

Page 95

1 (Copy of E-mail to Mr. Bolling, et al.  
2 by Mr. Fitzgibbons, dated November 17,  
3 2000 was marked Exhibit Number 8 for  
4 identification.)  
5 MR. FINE: And while the witness is  
6 reviewing the document, I will identify it for  
7 the record as a document that has been marked  
8 with Production Numbers BENTL 003065 through 66.  
9 A. Okay.  
10 Q. Do you recognize this document?  
11 A. Yes, I do.  
12 Q. Have you seen this document before?  
13 A. Yes.  
14 Q. What is this document?  
15 A. This is the first operations update that was  
16 drafted and sent to the board of directors.  
17 Q. Okay. And is this document an e-mail?  
18 A. Yes, it is.  
19 Q. And did you write this document?  
20 A. Yes, I did.  
21 Q. And did you send this document?  
22 A. Let me clarify that. I drafted this document,  
23 and it was ultimately approved by Jim Murphy  
24 before it was sent out.

Page 96

1 Q. And did you draft this document on or around  
2 November 17th, 2000?  
3 A. Yes.  
4 Q. Okay. And was it part of your job  
5 responsibilities to draft this document?  
6 A. Yes, it was.  
7 Q. And was this document a record of Bentley  
8 Pharmaceuticals or its board that was kept in  
9 the ordinary course of the company's business?  
10 A. Yes.  
11 Q. Okay. You testified a moment ago that this was  
12 the first operations update that was provided to  
13 the board of directors by you; is that correct?  
14 A. It was delivered by me. It was a report,  
15 essentially, from Jim Murphy.  
16 Q. And did -- and it was a report sent to the  
17 members of Bentley Pharmaceuticals' board of  
18 directors?  
19 A. Yes, it was.  
20 Q. And Mr. Bolling was a member of the board of  
21 directors at the time?  
22 A. Yes, he was.  
23 Q. Mr. Cleveland Russell as well?  
24 A. Yes.

Page 97

1 Q. And Mr. Miguel Fernandez?  
2 A. Yes.  
3 Q. Mr. Bob Gyurik?  
4 A. Yes.  
5 Q. Mr. Jim Murphy was a member of the board?  
6 A. Yes.  
7 Q. Was Mr. Packer a member of the board?  
8 A. He was, yes.  
9 Q. And was Mr. Price a member of the board?  
10 A. Yes, he was.  
11 Q. And Mr. Stote was?  
12 A. Yes, he was.  
13 Q. Do you know if this e-mail was sent BCC to  
14 anyone else?  
15 A. No, it was not.  
16 Q. The -- is this the kind of summary report that  
17 Mr. Murphy tasked you with preparing for the  
18 Bentley Pharmaceuticals board of directors that  
19 we had discussed earlier?  
20 A. Yes, it's typical of a report that would go to  
21 him.  
22 Q. Is this one of the reports that we were  
23 discussing earlier?  
24 A. It's the first report. It is one of them.

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 Q. And in this report, the first subject is Spain</p> <p>2 activities; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. As a percentage, if you had to estimate, what</p> <p>5 percentage of the information relating to Spain</p> <p>6 activities did you receive from Mr. Murphy?</p> <p>7 MS. ABREU: Objection, calls for</p> <p>8 speculation.</p> <p>9 A. I mean it's kind of hard to answer that. I</p> <p>10 don't know.</p> <p>11 Q. Okay. Did you receive information relating to</p> <p>12 Spain activities, the first topic in this</p> <p>13 report, from anyone other than Mr. Murphy?</p> <p>14 A. Are you speaking about this specific report?</p> <p>15 Q. This specific report, that's correct.</p> <p>16 A. As I read the text of this, I would have to say</p> <p>17 no, that it most likely was 100 percent from Jim</p> <p>18 Murphy on this.</p> <p>19 Q. Okay. And if you look at the second topic of</p> <p>20 the report, product development, there are five</p> <p>21 lettered subheadings under that; is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that's the second subject in this report; is</p>	<p style="text-align: right;">Page 100</p> <p>1 that subject coming from any individuals other</p> <p>2 than Mr. Murphy or members of the Bentley</p> <p>3 Pharmaceuticals management committee --</p> <p>4 management team?</p> <p>5 A. No.</p> <p>6 Q. At this point in time in November 2000, was any</p> <p>7 member of -- was any employee of Laboratorios</p> <p>8 Belmac on the Bentley Pharmaceuticals management</p> <p>9 team?</p> <p>10 MS. ABREU: Objection, foundation.</p> <p>11 A. No.</p> <p>12 Q. Earlier today, you testified about the summary</p> <p>13 reports for Bentley Pharmaceuticals' board of</p> <p>14 directors and said there were three general</p> <p>15 areas or topics in the reports. Are those three</p> <p>16 general areas Spain activities, product</p> <p>17 development, and U.S. licensing activities?</p> <p>18 A. Yes, they are, at least in the first report</p> <p>19 here. I'd have to review the other reports to</p> <p>20 see if those three areas were consistent.</p> <p>21 Q. Okay. I'd like to show you another document.</p> <p>22 (Copy of E-mail to Mr. Bolling, et al.</p> <p>23 by Mr. Fitzgibbons, dated December 27,</p> <p>24 2000 was marked Exhibit Number 9 for</p>
<p style="text-align: right;">Page 99</p> <p>1 that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And as a percentage, what percentage of</p> <p>4 information about that subject did you receive</p> <p>5 from Mr. Murphy?</p> <p>6 A. I can't give you percentages. I like to stay</p> <p>7 away from percentages on this report because I</p> <p>8 think it's irrelevant. The material under</p> <p>9 Item 2 was partially drafted by me from</p> <p>10 information taken from monthly management</p> <p>11 meeting reports and partially corrected,</p> <p>12 changed, edited by Jim Murphy to arrive at</p> <p>13 what's here in the final report. So I can't</p> <p>14 really give you a percentage.</p> <p>15 Q. Do you recall any of the information under</p> <p>16 subject product development or -- Subject 2,</p> <p>17 product development, coming from any source</p> <p>18 other than Mr. Murphy or Bentley Pharmaceuticals</p> <p>19 management meetings?</p> <p>20 A. No.</p> <p>21 Q. Okay. If you look at the third subject in this</p> <p>22 report, the U.S. licensing activities --</p> <p>23 A. Yes.</p> <p>24 Q. -- do you recall any of the information under</p>	<p style="text-align: right;">Page 101</p> <p>1 identification.)</p> <p>2 MR. FINE: While the witness is</p> <p>3 reviewing the document, I'll identify it for the</p> <p>4 record as a document marked with Production</p> <p>5 Numbers BENTL 019989 through 90.</p> <p>6 Q. Mr. Fitzgibbons --</p> <p>7 A. Yes.</p> <p>8 Q. -- do you recognize this document?</p> <p>9 A. Yes.</p> <p>10 Q. Have you seen this document before?</p> <p>11 A. Yes.</p> <p>12 Q. Can you identify this document?</p> <p>13 A. It's another operations update submitted by me</p> <p>14 to the board of directors.</p> <p>15 Q. And did you prepare this report?</p> <p>16 A. I did.</p> <p>17 Q. Did you --</p> <p>18 A. I drafted the report, the same as before, as</p> <p>19 approved by Jim Murphy for the final draft.</p> <p>20 Q. Did you prepare this report on or about</p> <p>21 December 27th, 2000?</p> <p>22 A. Yes.</p> <p>23 Q. And was it part of your job to prepare this</p> <p>24 report?</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 A. It was, yes.</p> <p>2 Q. And was this report kept as a record in the</p> <p>3 ordinary course of the business of Bentley</p> <p>4 Pharmaceuticals?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. The first -- do you know if this was sent</p> <p>7 to any individuals other than members of the</p> <p>8 Bentley Pharmaceuticals board?</p> <p>9 A. I don't know that it was. To the best of my</p> <p>10 recollection, it was not. This was primarily a</p> <p>11 report just to the board of directors.</p> <p>12 Q. And when you say primarily, do you know if it</p> <p>13 was anything other than a report to the board of</p> <p>14 directors?</p> <p>15 A. The only thing I recall is that Jordan Horvath</p> <p>16 was included on the distribution. He was not</p> <p>17 actually a member of the board of directors, but</p> <p>18 he was serving as the counsel.</p> <p>19 Q. And at this time, was Mr. Horvath counsel -- if</p> <p>20 you know, was Mr. Horvath counsel to Bentley</p> <p>21 Pharmaceuticals, Incorporated?</p> <p>22 A. Yes, he was.</p> <p>23 Q. Did he hold a position inside Bentley</p> <p>24 Pharmaceuticals, Incorporated or was he outside</p>	<p style="text-align: right;">Page 104</p> <p>1 information under Spain activities from</p> <p>2 Mr. Murphy?</p> <p>3 A. I don't recall if he gave it to me directly or</p> <p>4 not.</p> <p>5 Q. Do you recall receiving information about Spain</p> <p>6 activities from any persons other than</p> <p>7 Mr. Murphy?</p> <p>8 A. No, I don't recall receiving any from anyone</p> <p>9 else.</p> <p>10 Q. Okay. The second subject in this report is</p> <p>11 product development; is that correct?</p> <p>12 A. It is, yes.</p> <p>13 Q. Okay. And you testified with regard to</p> <p>14 Exhibit 8, which was a report to the Bentley</p> <p>15 Pharmaceuticals board of directors from November</p> <p>16 2000, that the information under product</p> <p>17 development was compiled by you with the</p> <p>18 supervision of Mr. Murphy from Bentley</p> <p>19 Pharmaceuticals management meetings. Is that</p> <p>20 accurate?</p> <p>21 A. That's accurate, yes.</p> <p>22 Q. Is the product development information here in</p> <p>23 Exhibit 9 also compiled by you under the</p> <p>24 supervision of Mr. Murphy based on Bentley</p>
<p style="text-align: right;">Page 103</p> <p>1 counsel?</p> <p>2 A. He was in-house counsel.</p> <p>3 Q. Do you know if he was also counsel to the board</p> <p>4 of directors at Bentley Pharmaceuticals?</p> <p>5 A. I don't know what his official function or title</p> <p>6 was in relation to the board members. I do know</p> <p>7 that he attended all the board meetings and</p> <p>8 acted as counsel during those board meetings.</p> <p>9 Q. Did you attend any board meetings?</p> <p>10 A. No, I never did.</p> <p>11 Q. You never attended a board meeting of Bentley</p> <p>12 Pharmaceuticals?</p> <p>13 A. Never.</p> <p>14 Q. Did you attend any board meetings of any</p> <p>15 subsidiaries of Bentley Pharmaceuticals,</p> <p>16 Incorporated?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did you hold any positions at any subsidiaries</p> <p>19 of Bentley Pharmaceuticals, Incorporated?</p> <p>20 A. No.</p> <p>21 Q. Again, the first subject in this report is</p> <p>22 titled Spain activities; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And do you recall whether you received the</p>	<p style="text-align: right;">Page 105</p> <p>1 Pharmaceuticals management meetings?</p> <p>2 A. For product development, Number 2, and most</p> <p>3 likely 3.</p> <p>4 Q. Do you recall why Jordan Horvath was included on</p> <p>5 this Bentley Pharmaceuticals operations update</p> <p>6 for the board of directors?</p> <p>7 A. Because he attended all the board meetings and</p> <p>8 he needed to be aware of the information that</p> <p>9 was being sent to board members.</p> <p>10 Q. Do you recall being made aware of that fact,</p> <p>11 that Mr. Horvath required information that was</p> <p>12 being sent to the board members?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How was that brought to your attention?</p> <p>15 A. By Jim Murphy.</p> <p>16 Q. And how did Mr. Murphy bring that to your</p> <p>17 attention?</p> <p>18 A. Told me to send it, put him on the distribution.</p> <p>19 Q. And did Mr. Murphy tell you to put Mr. Horvath</p> <p>20 on the distribution list personally or did</p> <p>21 Mr. Murphy send you an e-mail?</p> <p>22 A. I can't recall.</p> <p>23 Q. I'd like to show you another document.</p> <p>24 (Copy of E-mail to Mr. Murphy by</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 Mr. Fitzgibbons, dated February 28, 2 2001, and Attachment were marked Exhibit 3 Number 10 for identification.) 4 MR. FINE: And while the witness is 5 reviewing this exhibit, I'd like to identify it 6 for the record. It is a document that appears 7 to consist of a cover e-mail and another e-mail, 8 consecutively marked BENTL 022584 through 586. 9 Q. If you turn to the second page of this exhibit, 10 Mr. Fitzgibbons, do you recognize this document? 11 A. Yes, I do. 12 Q. Have you seen this document before? 13 A. Yes. 14 Q. When have you seen this document before? 15 A. When preparing the draft for approval by Jim 16 Murphy. 17 Q. Okay: Have you seen this document at any other 18 time? 19 A. When it was finalized and I sent it out to the 20 board of directors. 21 Q. Any other time? 22 A. No. 23 Q. Mr. Fitzgibbons, you prepared this document; is 24 that correct?</p>	<p style="text-align: right;">Page 108</p> <p>1 retain the drafts but to retain the final 2 approved copy. 3 Q. Okay. If you look at the cover e-mail, is this 4 an example of you making changes to a draft in 5 preparation for sending it to the board of 6 directors? 7 A. I don't know the answer to that. I can't recall 8 from, you know -- the basis when this was put 9 together. I just know from reading the text 10 that this was something I sent to Jim Murphy. 11 As it states there, this is new draft text to 12 send out to the board of directors. I don't 13 recall whether this was the first time. It 14 implies there that I may have even sent a prior 15 one. "If you got a prior version of this, 16 ignore it." That's all I can recall is what's 17 stated there. 18 Q. If you look at the last sentence of your cover 19 e-mail, you wrote, "Suggest we get this out NLT 20 Friday. Let me know when you want to go over 21 it." Is that correct? 22 A. That's correct. 23 Q. Do you know what NLT means? 24 A. Not later than.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I prepared the first draft of it for review by 2 Mr. Murphy. 3 Q. Is this document here the first draft? 4 A. It appears to be from reading my e-mail. 5 Q. And to which e-mail are you referring? 6 A. Your Exhibit 10, the first page. 7 Q. The first page which is marked BENTL 022584? 8 A. Yes. 9 Q. Was this Bentley Pharmaceuticals operations 10 update sent to the board of directors -- let me 11 rephrase that. Strike that. <del>the board of directors</del> 12 Was this document a draft of a Bentley 13 Pharmaceuticals operation update to be sent to 14 the board of directors? 15 A. Yes, it was a draft. 16 Q. And you prepared this draft in the ordinary 17 course of your job; is that correct? 18 A. Yes. 19 Q. And this document was kept by Bentley 20 Pharmaceuticals as a record in the ordinary 21 course of its business; is that correct? 22 A. Well, if this was a draft -- I'm not sure -- 23 obviously, it was kept; you have a copy of it, 24 but the normal course of business was not to</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And where you write, "Let me know when you want 2 to go over it," was it your practice to meet 3 with Mr. Murphy to discuss these drafts? 4 A. It was our practice to either meet personally 5 and go over it or, more often, it was by his 6 response by e-mail with a markup. 7 Q. Do you know why you were asking him to let you 8 know when he would want to go over it? 9 A. Because he's a busy man and he's hard to pin 10 down to go over things like this. I wanted to 11 pin him down to a time so we could get it out. 12 Q. And if you look again at the content of your 13 draft, the first topic is Spain activities; is 14 that correct? 15 A. Uh-huh, that's correct. 16 Q. And the second topic is product development; is 17 that correct? 18 A. Yes. 19 Q. And the third topic is licensing activities; is 20 that correct? 21 A. Yes. 22 Q. Just as in the earlier -- the two earlier 23 reports we looked at? 24 A. That's correct.</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 Q. I'd like you to look at another document.  2 (Copy of E-mail to Mr. Murphy, et al. by  3 Mr. Fitzgibbons, dated March 1, 2001 was  4 marked Exhibit Number 11 for  5 identification.)  6 Q. Let me go back to Exhibit 10 for a moment. Do  7 you recall if Mr. Murphy gave you any changes to  8 the draft that you prepared?  9 A. I don't recall.  10 Q. Turning ahead to Exhibit 11, do you recognize  11 Exhibit 11?  12 A. Yes.  13 Q. Have you seen Exhibit 11 before?  14 A. Yes.  15 Q. Can you tell me what Exhibit 11 is?  16 A. It's the operations update that was sent to the  17 board of directors in February 2001.  18 Q. Did you prepare the operations update?  19 A. I prepared the draft for final approval by  20 Mr. Murphy.  21 Q. And did you send a final approved draft to the  22 board of directors?  23 A. Yes, I did.  24 Q. Okay. And is this the final draft that you sent</p>	<p style="text-align: right;">Page 112</p> <p>1 substantive change in the operations update?  2 A. I don't recall whether it's a substantive change  3 or not.  4 Q. Do you receive -- or do you recall receiving any  5 questions about this operations update from  6 anyone on the Bentley Pharmaceuticals board of  7 directors?  8 A. No, I don't recall.  9 Q. Do you recall receiving any questions or  10 comments about this report from anyone on the  11 Bentley Pharmaceuticals management team?  12 A. No, I don't recall, no.  13 Q. And so I'm clear, anyone on the Bentley  14 Pharmaceuticals management team other than  15 Mr. Murphy in the preparation of this report?  16 A. That's correct. Mr. Murphy was the only one who  17 would have commented on all this.  18 Q. Do you know if Jordan Horvath ever commented on  19 this?  20 A. I don't recall him ever commenting.  21 Q. What did you understand Mr. Horvath's  22 responsibilities to be at Bentley  23 Pharmaceuticals, Incorporated?  24 A. He was our general counsel, in-house general</p>
<p style="text-align: right;">Page 111</p> <p>1 to the board of directors?  2 A. It appears to be, yes.  3 Q. And did you prepare this report in the ordinary  4 course of your job responsibilities?  5 A. Yes.  6 Q. As part of your job responsibilities?  7 A. Yes.  8 Q. And is this a record of Bentley Pharmaceuticals,  9 Incorporated that was kept in the ordinary  10 course of the company's business?  11 A. Yes, it is.  12 Q. And, again, if you look at this report, the  13 first subject area is Spain activities; is that  14 correct?  15 A. Yes.  16 Q. And the second subject area is product  17 development; is that correct?  18 A. That's correct.  19 Q. And the third subject is licensing activities --  20 A. That's correct.  21 Q. -- is that correct? And I note that the third  22 subject is no longer United States licensing  23 activities as in the prior operations updates  24 that we looked at. Does that reflect a</p>	<p style="text-align: right;">Page 113</p> <p>1 counsel.  2 Q. And for what was he responsible as in-house  3 general counsel?  4 A. Whatever general counsel is responsible for.  5 All legal concerns, matters, issues related to  6 the operation of the company.  7 Q. Do you know if Mr. Horvath had any other  8 responsibilities at the company?  9 A. Just in relation to the board of directors, and  10 that was hand in glove with his responsibilities  11 as general counsel, to be the counsel at board  12 meetings.  13 Q. Do you know if Mr. Horvath was general counsel  14 when you were hired at Bentley Pharmaceuticals,  15 Incorporated?  16 A. Yes, he was.  17 Q. Is Mr. Horvath general counsel at Bentley  18 Pharmaceuticals today?  19 A. No, he's not.  20 Q. Do you know when Mr. Horvath left Bentley  21 Pharmaceuticals?  22 A. Yes.  23 Q. When did Mr. Horvath leave Bentley  24 Pharmaceuticals?</p>

29 (Pages 110 to 113)



<p style="text-align: right;">Page 114</p> <p>1 A. I believe that was April of 2004.</p> <p>2 Q. And do you know why Mr. Horvath left Bentley</p> <p>3 Pharmaceuticals, Incorporated?</p> <p>4 A. Yes.</p> <p>5 Q. Why did Mr. Horvath leave Bentley</p> <p>6 Pharmaceuticals, Incorporated?</p> <p>7 A. He just no longer fit with the CEO's desires for</p> <p>8 a general counsel. They did not see eye to eye</p> <p>9 on many, many topics and just determined that it</p> <p>10 was best that he leave the company.</p> <p>11 Q. Do you recall what the topics were on which</p> <p>12 Mr. Horvath and the CEO --</p> <p>13 A. Not specifically.</p> <p>14 Q. -- did not see eye to eye? Generally?</p> <p>15 MS. ABREU: Objection.</p> <p>16 A. Just all I know is there were many, many areas</p> <p>17 that they disagreed on. I can't be specific.</p> <p>18 Q. Were those areas ever discussed at Bentley</p> <p>19 Pharmaceuticals management meetings?</p> <p>20 A. No.</p> <p>21 Q. How were you aware that they did not see eye to</p> <p>22 eye on many areas?</p> <p>23 A. Probably when this was made known to Jordan that</p> <p>24 they were no longer going to renew his contract,</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Did you ever discuss the reasons for Mr. Horvath</p> <p>2 leaving the company with anyone else at Bentley</p> <p>3 Pharmaceuticals, Incorporated?</p> <p>4 A. No, I did not.</p> <p>5 Q. Did you ever discuss the reasons for Mr. Horvath</p> <p>6 leaving with your spouse?</p> <p>7 A. No.</p> <p>8 Q. Does Bentley Pharmaceuticals, Incorporated have</p> <p>9 a general counsel today?</p> <p>10 A. Not an in-house counsel, general counsel, no.</p> <p>11 Q. If you look at the first topic under Exhibit 11,</p> <p>12 do you recall where you got the information for</p> <p>13 Spain activities?</p> <p>14 A. I don't recall directly where the information</p> <p>15 would have come. I can only say it would have</p> <p>16 come from Mr. Murphy. I would not have had any</p> <p>17 knowledge of this.</p> <p>18 Q. I'd like to show you another document.</p> <p>19 (Copy of E-mail to Mr. Murphy by</p> <p>20 Mr. Fitzgibbons, dated March 9, 2001 was</p> <p>21 marked Exhibit Number 12 for</p> <p>22 identification.)</p> <p>23 MR. FINE: While the witness is</p> <p>24 reviewing the exhibit, I'll identify it for the</p>
<p style="text-align: right;">Page 115</p> <p>1 and when that was made as public information to</p> <p>2 the people at the companies.</p> <p>3 Q. And that came as a surprise to you?</p> <p>4 MS. ABREU: Objection, calls for</p> <p>5 speculation.</p> <p>6 A. Somewhat -- not totally, but somewhat. I mean</p> <p>7 I'd be speculating whether it was a surprise or</p> <p>8 not.</p> <p>9 Q. Do you recall being surprised?</p> <p>10 A. No, I don't recall being surprised.</p> <p>11 Q. Okay. This may sound a little speculative. Why</p> <p>12 do you recall not being surprised?</p> <p>13 MS. ABREU: Yes, that is speculative,</p> <p>14 and I'll put an objection on the record.</p> <p>15 Q. You can still answer.</p> <p>16 A. I don't know. To be as truthful as I can on</p> <p>17 this, I don't recall being surprised or not</p> <p>18 surprised. I just know it was a matter of</p> <p>19 importance when you relieve your general counsel</p> <p>20 of duties, so it's a major event of interest to</p> <p>21 everybody at the company.</p> <p>22 Q. Did you ever discuss Mr. Horvath leaving the</p> <p>23 company with Mr. Murphy?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 117</p> <p>1 record as a document, three pages, consisting of</p> <p>2 pages production-numbered BENTL 00590 through</p> <p>3 92.</p> <p>4 Q. Mr. Fitzgibbons, do you recognize this document?</p> <p>5 A. I do.</p> <p>6 Q. Have you seen this document before?</p> <p>7 A. Yes.</p> <p>8 Q. When have you seen this document before?</p> <p>9 A. On or about the time that it was drafted and</p> <p>10 send out to the board of directors, and I can't</p> <p>11 recall. Let's see. Around the beginning of</p> <p>12 March of 2001. The e-mail was sent around the</p> <p>13 9th of March.</p> <p>14 Q. And what is this document?</p> <p>15 A. It's a copy of the March 1st, 2001 -- excuse me.</p> <p>16 It's a copy of the February 2001 operations</p> <p>17 update to the board of directors.</p> <p>18 Q. And is it also an e-mail forwarding that copy of</p> <p>19 the Bentley Pharmaceuticals operations update to</p> <p>20 the board of directors?</p> <p>21 A. It's an e-mail from me to Jim Murphy with a copy</p> <p>22 of what was -- that was sent out to the board of</p> <p>23 directors on March 1st.</p> <p>24 Q. And did you prepare that report to the board of</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 directors as part of your job responsibilities</p> <p>2 at Bentley Pharmaceuticals, Incorporated?</p> <p>3 A. I prepared the draft of this report, which was</p> <p>4 subsequently approved by Jim Murphy and sent</p> <p>5 out.</p> <p>6 Q. And did you prepare that report on or around</p> <p>7 March 1st, 2001?</p> <p>8 A. Yes.</p> <p>9 Q. And was that report a record of Bentley</p> <p>10 Pharmaceuticals, Incorporated, kept in the</p> <p>11 ordinary course of the company's business?</p> <p>12 A. Yes.</p> <p>13 Q. If you notice, again, the first subject is Spain</p> <p>14 activities; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. The second subject is product development again;</p> <p>17 is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the third subject is licensing activities;</p> <p>20 is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did Mr. Murphy ever explain to you how he wished</p> <p>23 the report structured?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 meeting reports, again, as edited or changed by</p> <p>2 Mr. Murphy.</p> <p>3 Q. And licensing activities was also sourced from</p> <p>4 management meeting reports?</p> <p>5 A. Similar to my comment that I had for product</p> <p>6 development, same process.</p> <p>7 Q. And I'd like to show you an additional document.</p> <p>8 (Copy of E-mail to Mr. Bolling, et al.</p> <p>9 by Mr. Fitzgibbons, dated January 22,</p> <p>10 2002, and attached Bentley</p> <p>11 Pharmaceuticals Operations Update -</p> <p>12 22-January 2002 were marked Exhibit</p> <p>13 Number 13 for identification.)</p> <p>14 MR. FINE: And while the witness is</p> <p>15 reviewing the exhibit, I'll identify it for the</p> <p>16 record as a covering e-mail and document</p> <p>17 consecutively Bates-numbered BENTL 003104</p> <p>18 through 08.</p> <p>19 Q. Mr. Fitzgibbons, do you recognize this document?</p> <p>20 A. I do, yes.</p> <p>21 Q. Have you seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. Can you identify this document?</p> <p>24 A. It's the operations update of 22, January, 2002</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. When did Mr. Murphy do that?</p> <p>2 A. As occurring, as the reports were developed. I</p> <p>3 mostly settled into a format with minor changes</p> <p>4 here and there. I pretty much stuck to the</p> <p>5 three areas, focus areas.</p> <p>6 Q. And did Mr. Murphy propose those three focus</p> <p>7 areas to you in the first report?</p> <p>8 A. Yes.</p> <p>9 Q. And the information on Spain activities, do you</p> <p>10 recall when you received that?</p> <p>11 A. I don't recall, but, again, I would have</p> <p>12 received most of that from Mr. Murphy.</p> <p>13 Q. Do you recall receiving any of that information</p> <p>14 from anyone other than Mr. Murphy?</p> <p>15 A. No.</p> <p>16 Q. And if you look at product development, you</p> <p>17 testified with regard to earlier reports to the</p> <p>18 Bentley Pharmaceuticals board of directors that</p> <p>19 that information was compiled based on Bentley</p> <p>20 Pharmaceuticals management meetings. Is that</p> <p>21 accurate?</p> <p>22 A. Mostly. It was compiled from -- all of the</p> <p>23 information taken under 2, product development,</p> <p>24 was primarily sourced from the management</p>	<p style="text-align: right;">Page 121</p> <p>1 to the board of directors.</p> <p>2 Q. And did you prepare this operations update for</p> <p>3 the Bentley Pharmaceuticals board of directors?</p> <p>4 A. Yes, I did. I prepared the draft for subsequent</p> <p>5 approval by Mr. Murphy.</p> <p>6 Q. And do you recall whether -- strike that. And</p> <p>7 you prepared this draft -- strike that. Was</p> <p>8 this draft sent out to the board of directors?</p> <p>9 A. Yes, it was.</p> <p>10 Q. And you prepared this report in the ordinary</p> <p>11 course of your job at Bentley Pharmaceuticals;</p> <p>12 is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And this report is a record of Bentley</p> <p>15 Pharmaceuticals, Incorporated kept in the</p> <p>16 ordinary course of the company's business; is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And if you look again at the report, it</p> <p>20 indicates that there are three areas; is that</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. The first again, as in the reports to the</p> <p>24 Bentley Pharmaceuticals board of directors that</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 we've looked at today, is Spain activities; is</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And the second is product development; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the third is licensing activities; is that</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And if you look at Spain activities, do you</p> <p>11 recall who provided you with the information</p> <p>12 included there?</p> <p>13 A. Mostly Jim Murphy. I may have done some</p> <p>14 research on my own to get the information on</p> <p>15 generic drug submissions as subitem K under 1K.</p> <p>16 Q. Why do you think you did some research on your</p> <p>17 own to get that information on generic drugs?</p> <p>18 A. Because I recall going through press releases</p> <p>19 that would identify drug submissions.</p> <p>20 Q. Did you ordinarily go through the process of</p> <p>21 doing your own research on these reports?</p> <p>22 A. No.</p> <p>23 Q. Do you recall why you went through the process</p> <p>24 of doing your own research on this report?</p>	<p style="text-align: right;">Page 124</p> <p>1 changed by Mr. Murphy.</p> <p>2 Q. Do you recall anything specific about the</p> <p>3 circumstances of drafting this operations update</p> <p>4 for January 22nd, 2002?</p> <p>5 A. If I recall -- I'm not sure if it's the first</p> <p>6 one, but it's a departure from the prior ones.</p> <p>7 The prior ones were sent out as e-mails. This</p> <p>8 was sent out as a Word document, which was an</p> <p>9 attachment to an e-mail.</p> <p>10 Q. Do you recall why this was sent out as a Word</p> <p>11 document as an attachment to an e-mail?</p> <p>12 A. It was getting too lengthy for just text in an</p> <p>13 e-mail, so we decided to put it into an</p> <p>14 attachment.</p> <p>15 Q. When you say we, do you mean you and Mr. Murphy?</p> <p>16 A. Yes.</p> <p>17 Q. Did Mr. Murphy approve that change?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall anything else about the</p> <p>20 circumstances of drafting this operations report</p> <p>21 to the board of directors of Bentley</p> <p>22 Pharmaceuticals, Incorporated?</p> <p>23 A. No, I do not.</p> <p>24 Q. Earlier today, you testified that you were</p>
<p style="text-align: right;">Page 123</p> <p>1 A. It was to reduce the amount of work for</p> <p>2 Mr. Murphy, to edit it, and to think on my own a</p> <p>3 little bit and come up with things that were</p> <p>4 public information that had already occurred.</p> <p>5 Q. Is there anything else under subheading 1, Spain</p> <p>6 Activities, that reflected your own activity or</p> <p>7 your own research?</p> <p>8 A. No, I would say not.</p> <p>9 Q. Did you show a draft of this report to</p> <p>10 Mr. Murphy?</p> <p>11 A. Yes.</p> <p>12 Q. Did he review that draft report?</p> <p>13 A. Yes.</p> <p>14 Q. Did he approve that draft report?</p> <p>15 A. Yes.</p> <p>16 Q. If you look at product development, can you tell</p> <p>17 me what the source of the information under the</p> <p>18 subjects in product development were?</p> <p>19 A. Again, mostly from reports of our management</p> <p>20 meetings and, again, as edited and perhaps</p> <p>21 changed here and there by Mr. Murphy.</p> <p>22 Q. And the third subject, licensing activities?</p> <p>23 A. The same comment for that. Mostly from the</p> <p>24 management report and, again, as edited or</p>	<p style="text-align: right;">Page 125</p> <p>1 involved in regulatory work for Bentley</p> <p>2 Pharmaceuticals; is that correct?</p> <p>3 A. Well, yes, but -- I'll just say yes for now. If</p> <p>4 you have a follow-on question, I might explain</p> <p>5 it.</p> <p>6 Q. What was your involvement in regulatory work for</p> <p>7 Bentley Pharmaceuticals?</p> <p>8 A. Just to periodically deal with our outside</p> <p>9 contracted assistance for regulatory work, to</p> <p>10 maintain certain regulatory files resident at</p> <p>11 the company premises, and to periodically sit in</p> <p>12 on any meetings where regulatory planning was</p> <p>13 accomplished.</p> <p>14 Q. And when you say regulatory, do you mean</p> <p>15 corporate regulatory, Securities and Exchange</p> <p>16 Commission matters?</p> <p>17 A. No.</p> <p>18 Q. Do you mean pharmaceutical regulatory?</p> <p>19 A. Pharmaceutical regulatory, things pertaining to</p> <p>20 files to the FDA.</p> <p>21 Q. Do you recall being involved in any regulatory</p> <p>22 matters involving any filings to entities other</p> <p>23 than the FDA?</p> <p>24 A. No.</p>

32 (Pages 122 to 125)